Reports of Cases

JUDGMENT OF THE GENERAL COURT (Third Chamber, Extended Composition)

19 March 2019*

(State aid – Postal sector – Compensation for net cost arising from universal service obligations – Decision declaring aid compatible with the internal market – Actions for annulment – Interest in bringing proceedings – Obligation to state reasons – Equal treatment – Proportionality – Right to property – Freedom to conduct a business)

In Joined Cases T-282/16 and T-283/16,

Inpost Paczkomaty sp. z o.o., established in Krakow (Poland), represented initially by T. Proć, and subsequently by M. Doktór, lawyers,

applicant in Case T-282/16,

Inpost S.A., established in Krakow, represented by W. Knopkiewicz, lawyer,

applicant in Case T-283/16,

v

European Commission, represented by K. Herrmann, K. Blanck and D. Recchia, acting as Agents,

defendant,

supported by

Republic of Poland, represented by B. Majczyna, acting as Agent,

intervener,

APPLICATIONS pursuant to Article 263 TFEU seeking the annulment of Commission Decision C(2015) 8236 final of 26 November 2015, by which the Commission did not raise objections with regard to the measure notified by the Polish authorities relating to the aid granted to Poczta Polska in the form of compensation for the net cost arising from the performance, by that company, of its universal postal service obligations for the period from 1 January 2013 to 31 December 2015,

THE GENERAL COURT (Third Chamber, Extended Composition),

composed of S. Frimodt Nielsen, President, V. Kreuschitz, I.S. Forrester, N. Półtorak and E. Perillo (Rapporteur), Judges,

Registrar: K. Guzdek, Administrator,

* Language of the case: Polish.

having regard to the written part of the procedure and further to the hearing on 24 April 2018,

gives the following

Judgment

I. Background to the dispute and the main legal provisions applicable

1 Poczta Polska ('PP') is a Polish public limited company whose sole shareholder is the State Treasury of the Republic of Poland. At the time of the facts which are the subject of the present case, its activities consisted, essentially, of universal postal services and courier services, of which it was at that time the main provider in Poland.

2 In accordance with the relevant provisions of the EC Treaty applicable to the present dispute and concerning the development of the internal market, the services in question fell, as they still do today, within the shared legislative competence of the European Community, now the European Union, on the one hand, and the Member States, on the other.

3 Thus, with regard to EU law, the applicable rules were laid down by Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67 with regard to the full accomplishment of the internal market of Community postal services (OJ 2008 L 52, p. 3) ('the Postal Directive').

4 In particular, with regard to the possible financial implications of the liberalisation of that service sector in the internal market of the European Union, Article 7(3) of the Postal Directive continues to provide that, where universal service obligations give rise to 'an unfair financial burden' which the designated provider of that service would have to bear alone, the Member State concerned may introduce 'a mechanism for the sharing of the net cost of the universal service obligations between [the various] providers'.

5 According to Article 7(4) of the Postal Directive, if such a mechanism is introduced, the Member State concerned may 'establish a compensation fund which may be funded by … fees' imposed on the providers of the services in question. Under Article 7(5) of the Postal Directive, in establishing that compensation fund and when fixing the level of the financial contributions referred to in Article 7(3) and (4) of that directive, 'Member States shall ensure that the principles of transparency, non-discrimination and proportionality are respected'.

6 In accordance with the wording of the second paragraph of Part B of Annex I to the Postal Directive, the net cost of universal service obligations is any cost related to the operation of the universal service provision. The net cost of universal service obligations is equal to 'the difference between the net cost for a … provider [of that service] of operating with the … obligations [laid down by the national postal law] and [for] the same postal service provider operating without the … obligations [laid down by the national postal law]'.

7 In Poland, the Postal Directive was transposed by the ustawa Prawo pocztowe (Postal Law) of 23 November 2012 (Dziennik Ustaw of 2012, item 1529) ('the Polish Postal Law'). According to Article 2 of that law, the services which, in that country, fall within the scope of the universal service are those involving the sending of postal letters and parcels and the sending of items for the blind, which are not performed by the designated operator pursuant to its universal service obligations. As part of the universal postal service, postal letters and parcels must be transported and distributed

every working day and at least 5 days per week. The postal items concerned may not weigh more than 2 000 grams, though parcels may weigh up to 10 000 grams (Articles 45 and 46 of the Polish Postal Law).

8 On the basis of the Polish Postal Law (Article 178(1)), the implementation of the reform of the Polish postal service was first of all entrusted, for a period of 3 years from 1 January 2013, to PP, which was thus charged with assuming the obligations of provider of universal postal services throughout Poland.

9 The legal framework of that reform having thus been established, the Polish authorities, using, in particular, the options granted by the Postal Directive (see paragraphs 3 to 6 above) and the relevant provisions of the Polish Postal Law, then notified to the European Commission, on 10 June 2014, an aid scheme concerning, on the one hand, a mechanism for the sharing of the net cost of the universal service obligations and, on the other, the creation of a compensation fund to complement the setting up of that mechanism.

10 The compensation fund was financed partly by the contributions which the postal operators concerned were required to pay to that fund, and partly by the State budget. In particular, the obligation to contribute provided for in Article 108(2) of the Polish Postal Law covered postal operators providing equivalent universal services, whose annual revenue from that activity nevertheless had to be greater than 1 million Polish zlotys (PLN). In all cases, the amount due from each operator concerned could not exceed, annually, a cap of 2% of the amount of the revenue from its universal service provision ('the percentage determining the maximum amount of the contribution').

11 Initially intended to cover the period from 2013 to 2026, that mechanism was ultimately limited, by a letter sent by the competent Polish authorities to the Commission on 5 January 2015, to the period from 2013 to 2015 ('the national compensation scheme' or 'the measure at issue').

12 On 26 November 2015, the Commission decided, pursuant to Article 4(3) of Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 [TFEU] (OJ 2015 L 248, p. 9), not to raise objections to the national compensation scheme, on the ground that it constituted State aid which was compatible with the internal market ('the contested decision'). According to the Commission, in accordance with the criteria set out in sections 2.1 to 2.8 of its Communication on the European Union framework for State aid in the form of public service compensation (2011) (OJ 2012 C 8, p. 15) ('the SGEI Framework'), the measure at issue is not such as to affect trade to an extent contrary to the interests of the European Union. Moreover, the operating principles of the compensation fund do not result in any serious distortions of competition and do not therefore give rise to a need for additional requirements to ensure that the development of trade is not affected to an extent incompatible with the interests of the European Union.

13 The applicants are, on the one hand, Inpost Paczkomaty sp. z o.o. and, on the other, Inpost S.A. Those companies are part of the Polish group Integer.pl S.A., which, pursuant to Article 2 of the Polish Postal Law, contributes to the financing of the compensation fund created by that law and enabling PP to receive corresponding compensation (see paragraph 9 above).

II. Procedure and forms of order sought

14 By applications lodged at the Registry of the General Court on 30 May 2016, the applicants brought, respectively, the actions registered as Cases T-282/16 and T-283/16.

15 By document lodged at the Court Registry on 15 September 2016, the Republic of Poland applied for leave to intervene in the present proceedings in support of the form of order sought by the Commission.

16 By document lodged at the Court Registry on 27 September 2016, the Commission requested that the present cases be joined.

17 By decisions of 28 October 2016, the President of the Third Chamber of the General Court granted the Republic of Poland leave to intervene.

18 By decision of the President of the Third Chamber of the General Court of 14 November 2016, Cases T-282/16 and T-283/16 were joined for the purposes of the written and oral parts of the procedure and of the decision which closes the proceedings, in accordance with Article 68 of the Rules of Procedure of the General Court.

19 The Republic of Poland lodged its statement in intervention on 19 January 2017.

20 Acting on a proposal from the Judge-Rapporteur, the General Court (Third Chamber) decided to open the oral part of the procedure, and, by way of measures of organisation of procedure as provided for in Article 89 of the Rules of Procedure, it put written questions to the parties, inviting them to respond to those questions in writing, which they did within the prescribed periods.

21 Acting on a proposal from its Third Chamber, the General Court decided, pursuant to Article 28 of its Rules of Procedure, to refer the case to a Chamber sitting in extended composition.

22 The parties presented oral argument and answered the questions put by the Court at the hearing on 24 April 2018.

23 The applicants claim that the Court should:

– annul the contested decision;

– order the Commission to pay the costs.

24 The Commission and the Republic of Poland contend that the Court should:

– dismiss the actions;

– order the applicants to pay the costs.

III. Law

A. Subject matter of the dispute and the applicants' interest in bringing proceedings

25 With regard to the subject of the present dispute, it should be noted that, contrary to the applicants' assertions, the national compensation scheme does not concern the period after 31 December 2015, with the financing of universal postal services for the period from 2016 to 2025 not being the subject of the contested decision (see recitals 2 and 12 of that decision and paragraph 11 above).

26 In addition, it should be emphasised that, in response to a written question put by the Court by way of a measure of organisation of procedure, the applicants indicated that the compensation fund had not been used in either 2014 or 2015 and that '[the] absence in practice of an application by [PP] allowing that mechanism to be implemented for th[ose] years … mean[t] that the contested decision d[id] not have adverse legal effects on the applicant[s]'. It follows that, as the applicants themselves admit, they have failed to establish that they have an interest in bringing proceedings against the contested decision inasmuch as that decision does not raise objections to the measure at issue with regard to its

application in 2014 and 2015, as such an interest requires that the annulment of that decision must be capable, in itself, of having legal consequences and that the action may therefore, through its outcome, procure an advantage for the party which brought it (see, to that effect, judgment of 17 September 2015, *Mory and Others* v *Commission*, C-33/14 P, EU:C:2015:609, paragraph 55 and the case-law cited).

27 In those circumstances, it must be concluded that the present actions are admissible only inasmuch as the contested decision had legal effects on the applicants in the course of 2013, as the compensation fund which is the subject of the measure at issue and of that decision was not activated in 2014 and 2015.

B. Substance

28 In support of the actions, the applicants raise seven pleas in law, alleging, in essence, in the case of the first five pleas, infringements of Article 106(2) TFEU in that the SGEI Framework and Article 7 of the Postal Directive were not respected, in the case of the sixth plea, infringement of Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter') and, in the case of the last plea, breach of the obligation to state reasons.

1. First plea in law, alleging infringement of Article 106(2) TFEU in that Article 7(2) of the Postal Directive and paragraph 19 of the SGEI Framework were not respected

29 The applicants maintain, in essence, that the measure at issue should not have been declared compatible with the internal market by the Commission, because the Polish legislature's decision to entrust the universal postal services at issue to PP had not been the subject either of a contract award procedure respecting the EU rules applicable in the area of public procurement or, in any event, of a procedure respecting the principles of transparency, equal treatment and non-discrimination.

30 The Commission and the Republic of Poland dispute the merits of this plea in law. In addition, at the hearing, the Commission added, in that regard, that the applicants should not be regarded as entitled to raise such a plea in law, which concerns only the situation and specific rights of PP.

31 According to Article 7(2) of the Postal Directive:

'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, competitive dialogue or negotiated procedures with or without publication of a contract notice.'

32 In the present case, it is admittedly common ground that PP was designated by the Polish Postal Law as provider of universal postal services without the Polish authorities' having first organised a contract award procedure.

33 However, as the Commission and the Republic of Poland correctly point out, Article 7(2) of the Postal Directive does not oblige the Member State concerned to make use of contract award procedures to select the entity to which it intends to entrust universal postal service provision, as such use is, in accordance with the terms of that provision according to which 'Member States may ensure', merely optional.

34 That literal interpretation of Article 7(2) of the Postal Directive is confirmed by a systematic interpretation, particularly in the light of recital 23 of Directive 2008/6, which is worded as follows:

'… Member States should be given further flexibility to determine the most efficient and appropriate mechanism to guarantee the availability of the universal service, while respecting the principles of objectivity, transparency, non-discrimination, proportionality and least market distortion … [, either by] the provision of the universal service by market forces, [or by] the designation of one or several undertakings to provide different elements of the universal service or to cover different parts of the territory … [, or by] public procurement of services.'

35 It follows that contract award procedures are only one of the options that can be selected by the Member State concerned, provided, in particular, that, in making that choice, the principles of transparency, equal treatment and non-discrimination are duly respected. Moreover, that interpretation corresponds to the interpretation given by the Commission in paragraph 56 of the SGEI Framework, in which it recognises that the Member State concerned may entrust 'a public service provider, without a competitive selection procedure, with the task of providing [a service of general economic interest (SGEI)] in a non-reserved market …'

36 The applicants do not dispute 'the legitimacy as such of [the] designation of [PP as provider of universal postal services] by legislative means', but merely maintain, in essence, that that designation breached the requirements of transparency, equal treatment and non-discrimination on the ground that, in December 2012, 'the Polish authorities adopted [the Polish Postal Law] under fundamentally different conditions to those which had been the subject of the public consultation of [September] 2010, in particular with regard to the increase in the level of financing of the net cost, which went from 1 to 2% of revenue'.

37 It must nevertheless be observed that such a line of argument does not concern the method or procedure whereby PP was designated as the sole provider of universal postal services, for a period of 3 years from 1 January 2013, but seeks to challenge, anticipating, in addition, the second plea in law, the method whereby the level of compensation at issue was ultimately calculated and adopted by the Polish authorities. Consequently, inasmuch as that line of argument is based on the requirements of transparency, equal treatment and non-discrimination, it must be rejected as ineffective.

38 Moreover, it is common ground that the designation of PP as provider of universal postal services for a set period had already been envisaged at the time of the public consultation of September 2010, which took place precisely as part of the relevant national legislative process. In any event, it follows that, with regard to the choice of provider of universal postal services, the applicants cannot validly maintain that the Postal Law adopted in 2012 was adopted in 'fundamentally different' conditions to those which were the subject of the public consultation of September 2010 to support the existence of a breach of the requirements of transparency, equal treatment and non-discrimination.

39 Lastly, the fact that PP was designated as provider of universal postal services directly and exclusively by legislative means is not sufficient, in itself, to establish infringement of the principles of transparency, equal treatment and non-discrimination. In that regard, it should be pointed out that the Polish Postal Law was published on 29 December 2012 in Poland's official journal and that the Republic of Poland was free, in the exercise of its wide discretion as to the definition of the scope of a universal service (see judgment of 20 December 2017, *Comunidad Autónoma del País Vasco and Others* v *Commission*, C-66/16 P to C-69/16 P, EU:C:2017:999, paragraphs 69 and 70 and the case-law cited) and in accordance with the provisions of paragraph 15 of the SGEI Framework, to determine the legal form of the act entrusting responsibility for the operation of the SGEI to the designated undertaking.

40 The same applies where the designated universal service provider is, as in the present case, a public entity 'wholly owned by the State'. The public nature alone of that provider does not call into question the fact that it was designated in accordance with the principles governing the grant of a universal service provider mandate, as recognised in the case-law (see, to that effect, judgment of 12 February 2008, *BUPA and Others* v *Commission*, T-289/03, EU:T:2008:29, paragraph 161 et seq.).

41 In view of all of the foregoing, and without its being necessary to rule on the question of the admissibility of this plea in law, as raised during the hearing by the Commission, the first plea in law must, in any event, be rejected as unfounded.

2. Second plea in law, alleging infringement of Article 106(2) TFEU in that the conditions provided for in paragraphs 14 and 60 of the SGEI Framework were wrongly regarded as satisfied

42 In the second plea in law, the applicants raise two distinct complaints. On the one hand, they maintain that the public consultation requirements resulting from the application of paragraph 14 of the SGEI Framework were not respected in the present case. The draft Polish Postal Law varied significantly from the initial draft, to which the public consultation organised in September 2010 had related, as the level of contribution had in the meantime gone from 1 to 2% of the revenue concerned. Thus, in the absence of a new consultation, which was required on the basis of paragraph 14 of the SGEI Framework, such a legislative change took place without the interests of the postal operators – other than PP – or the universal service needs having been properly taken into account by the Polish authorities. On the other hand, the applicants take the view that the transparency requirements provided for in paragraph 60 of the SGEI Framework were not respected either, as the Commission did not find, in the contested decision, that the results of the public consultation had been published, whether on the internet or by any other appropriate means of publication.

43 The Commission and the Republic of Poland dispute the merits of those arguments. At the hearing, the Commission also argued that the plea in law in question should be regarded as inadmissible, as it does not affect the situation of each of the applicants either directly or individually.

(a) First complaint

44 With regard to the first complaint, it should be borne in mind, as a preliminary point, that, in the exercise of its discretion under Article 106(2) TFEU, the Commission may adopt rules of conduct in order to establish the criteria on the basis of which it proposes to assess the compatibility, with the internal market, of aid measures related to the operation of an SGEI, envisaged by the Member States. In adopting such rules of conduct, such as those of the SGEI Framework, and announcing by publishing them that they will henceforth apply to the cases to which they relate, the Commission imposes a limit on the exercise of its aforementioned discretion and, in principle, cannot depart from those rules without being found, where appropriate, to be in breach of general principles of law, such as the principle of equal treatment or that of the protection of legitimate expectations (see, to that effect, judgments of 8 March 2016, *Greece* v *Commission*, C-431/14 P, EU:C:2016:145, paragraphs 68 to 70; of 19 July 2016, *Kotnik and Others*, C-526/14, EU:C:2016:570, paragraphs 38 to 40 and the case-law cited; and of 16 July 2014, *Zweckverband Tierkörperbeseitigung* v *Commission*, T-309/12, not published, EU:T:2014:676, paragraph 212).

45 Paragraph 14 of the SGEI Framework reads as follows:

'For the scope of application of the principles set out in this Communication, Member States should show that they have given proper consideration to the public service needs supported by way of a public consultation or other appropriate instruments to take the interests of users and providers into account. This does not apply where it is clear that a new consultation will not bring any significant added value to a recent consultation.'

46 It is clear from the wording of that provision that there is no obligation to organise a public consultation, as such a procedure constitutes only one of the appropriate instruments which the Member State may use in order to give consideration to the public service needs supported and to take the interests of service users and providers into account.

47 Moreover, during the public consultation of September 2010, the applicants were able to effectively make their views known on the conditions relating to the operation of the compensation fund, and in particular their disagreement with a level of contribution set at 1%, that is with a level lower than 2%.

48 Consequently, inasmuch as the applicants were able to express their disagreement with a level lower than the level ultimately adopted, arguing that they thought that it was already excessive, a new consultation would not have brought, on that point, 'any significant added value' for the purposes of paragraph 14 of the SGEI Framework. In addition, the fact that, thereafter, the applicants' arguments were not accepted by the competent national authorities does not mean that those companies were not able to make their views known on that specific point (see, to that effect and by analogy, judgment of 12 December 2014, *Crown Equipment (Suzhou) and Crown Gabelstapler* v *Council*, T-643/11, EU:T:2014:1076, paragraph 43 and the case-law cited).

49 It follows that the public consultation of September 2010 constituted an 'appropriate instrument' for the purposes of paragraph 14 of the SGEI Framework, which, in particular, enabled the applicants to effectively make their views known and the Member State concerned to properly take their interests as service providers into account.

50 In those circumstances, the Commission could, in recital 122 of the contested decision, without making an error either of law or of assessment, take the view that, in essence, the Republic of Poland had given consideration to the service needs inasmuch as the SGEI obligations entrusted to PP by the Polish Postal Law met the service requirements defined in the Postal Directive and in view of which a public consultation had, in any event, taken place, pursuant to paragraph 14 of the SGEI Framework.

51 Lastly, that conclusion cannot be called into question by the applicants' arguments referring, on the one hand, to the fact that 'the sole reason for the increase in the cap on contributions to 2% was to avoid using the State Treasury budget' and, on the other, to the fact that mail service operators should also have contributed to the financing of the compensation fund. In that regard, it is sufficient to observe that those arguments are ineffective for the purposes of the first complaint, alleging failure to comply with the requirements of procedural transparency laid down in paragraph 14 of the SGEI Framework.

52 In the light of the foregoing, the first complaint of this second plea in law must be rejected.

(b) Second complaint

53 With regard to the second complaint, it is necessary to recall the terms of paragraph 60 of the SGEI Framework, which is worded as follows:

'For each SGEI compensation falling within the scope of this Communication, the Member State concerned must publish the following information on the internet or by other appropriate means:

(a) the results of the public consultation or other appropriate instruments referred to in paragraph 14;

…'

54 It is sufficient, in that regard, to point out that, in recital 158 of the contested decision, the Commission observed, without erring as to the facts, that the Polish Postal Law had been published. Moreover, contrary to the applicants' assertions, paragraph 60 of the SGEI Framework does not give rise to an obligation for the Member State to publish the results of the public consultations separately. Lastly, it is apparent from the considerations set out in paragraphs 46 to 50 above that the Commission could validly take the view that the transparency requirements referred to in paragraph 14 of the SGEI Framework had been complied with, so that its corresponding conclusion, which appears in recital 160 of the contested decision, does not contain any errors.

55 Consequently, in the light of the foregoing, the second complaint must also be rejected, as must, as a result, and without its being necessary to rule on its admissibility, the second plea in law in its entirety.

3. Third plea in law, alleging, on the one hand, infringement of Article 106(2) TFEU in that the Commission infringed paragraph 52 of the SGEI Framework and, on the other, infringement of Article 7(1) and (3) to (5) of the Postal Directive

56 By their third plea in law, the applicants maintain that the Commission infringed paragraph 52 of the SGEI Framework and Article 7(1) and (3) to (5) of the Postal Directive. In essence, they argue that the rules of the compensation fund are discriminatory, disproportionate and were adopted on the basis of a procedure which is not transparent. Moreover, they take the view that the Commission failed to carry out a proper examination in order to determine whether the universal service obligations entailed a net cost for PP and represented an 'unfair' financial burden on that undertaking for the purposes of Article 7(3) of the Postal Directive.

57 As a preliminary point, it should be borne in mind that it is apparent from the contested decision that the amount of the contribution of the postal operators required to contribute to the compensation fund is set at a certain percentage of their relevant turnover. The turnover taken into consideration is the turnover resulting, in the reference year, from universal service provision (for the universal service provider) and from the provision of equivalent services (for the universal service provider and all the other postal operators required to contribute to the compensation fund). Postal operators with a relevant turnover below PLN 1 million in the reference year are, however, exempted from contributing to the compensation fund. As to the percentage determining the maximum amount of the contribution, it is the same for all the operators required to contribute to the compensation fund and is capped at 2% of their relevant turnover. That percentage is calculated as the ratio between, on the one hand, the total amount of the compensation due to the universal service provider and, on the other, the total of the relevant turnover of all the postal operators required to contribute to the compensation fund in the reference year (recitals 164, 165 and 170 of the contested decision).

58 Under the Polish Postal Law, the total amount of the compensation is calculated as ordered by decision of the Polish postal regulator ('the UKE'), following verification by an independent expert of the calculations and supporting accounting documents submitted by PP (recital 18 of the contested decision). In that regard, the net cost of PP's universal service obligations gives rise to a right to compensation only if the universal service provision has in fact led to an accounting loss (recital 16 of the contested decision). If compensation is required to be paid to PP, the UKE also sets the individual amount of compensation for each postal operator required to contribute to the compensation fund (recital 19 of the contested decision).

59 In the light of those rules, the Commission considered that the methodology used to calculate the amount of the compensation to which PP was entitled met the requirements of the SGEI Framework, inasmuch as PP would receive compensation only if its universal service obligations entailed a net cost and represented an unfair burden (recital 152 of the contested decision). The Commission also considered that the amount of the compensation and the percentage determining the maximum

amount of the contribution were in line with the principles of non-discrimination and proportionality (recitals 166 and 171 of the contested decision). In addition, the Commission considered that the rules of the compensation fund were transparent inasmuch as they had been published in advance in the Polish Postal Law (recital 176 of the contested decision).

60 Consequently, the Commission concluded that the measure at issue did not cause any serious distortions of competition and was compatible with the rules on State aid (recital 177 of the contested decision).

(a) Scope of the third plea in law and its effectiveness in view of the complaint alleging infringement of Article 7 of the Postal Directive

61 By their third plea in law, the applicants maintain, inter alia, that the Commission infringed Article 7(1) and (3) to (5) of the Postal Directive.

62 The Commission contends that the plea in law should be rejected in its entirety. In particular, it maintains that the third plea in law is ineffective inasmuch as it alleges possible infringement of Article 7 of the Postal Directive. In view of the content and scope of its review of the compatibility of State aid, the Commission should apply only the rules specific to that field, without also being required to determine whether the notified measure is compliant with other EU rules, that is, in this case, with the Postal Directive.

63 In that regard, it should be borne in mind that, when the Commission applies the procedure for the review of State aid, it is required, in accordance with the general scheme of the Treaty, to ensure that provisions governing State aid are applied consistently with specific provisions other than those relating to State aid, and therefore to assess the compatibility of the aid in question with those specific provisions (see judgment of 3 December 2014, *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 181 and the case-law cited).

64 However, such an obligation is imposed on the Commission only where the aspects of aid are so inextricably linked to the object of the aid that it is impossible to evaluate them separately. The obligation is not imposed, however, where the conditions or factors of an aid scheme, even though they form part of the aid, may be regarded as not being necessary for the attainment of its object or for its proper functioning (see judgment of 3 December 2014, *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 182 and the case-law cited).

65 If the Commission were required to adopt a definitive position, irrespective of the link between the aspects and the object of the aid at issue, in a procedure for the review of State aid, on the existence or absence of an infringement of provisions of EU law distinct from those coming under Articles 107 and 108 TFEU, read together, where appropriate, with Article 106 TFEU, that would run counter to, first, the procedural rules and guarantees – which in part differ significantly and imply distinct legal consequences – specific to the procedures specially established for control of the application of those provisions and, second, the principle of autonomy of administrative procedures and remedies. Such a requirement would also conflict with the derogation from the rules of the Treaty provided for in Article 106(2) TFEU, which could never be effective if its application were at the same time required to ensure full compliance with the rules from which it is supposed to derogate (see judgment of 3 December 2014, *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 183 and the case-law cited).

66 Accordingly, if the aspects of the aid at issue are inextricably linked to its object, the Commission must assess its compatibility with provisions other than those relating to State aid in the context of the procedure provided for in Article 108 TFEU and that assessment may result in a finding that the aid concerned is incompatible with the internal market. By contrast, if the aspects of the aid at issue can

be separated from its object, the Commission is not required to assess its compatibility with provisions other than those relating to State aid in the context of the procedure provided for in Article 108 TFEU (see judgment of 3 December 2014, *Castelnou Energía* v *Commission*, T‑57/11, EU:T:2014:1021, paragraph 184 and the case-law cited).

67 In addition, it should also be borne in mind that it has already been held that the method by which aid is financed may render the entire State scheme at issue incompatible with the internal market, so that, in that case, the Commission is obliged to examine the aid also taking into account the economic and legal effects which its financing may produce (see, to that effect, judgment of 21 July 2011, *Alcoa Trasformazioni* v *Commission*, C‑194/09 P, EU:C:2011:497, paragraph 48).

68 In the present case, it should be observed that the aid measure at issue seeks to cover the net cost of PP's universal service obligations by means of a compensation fund financed by contributions imposed on certain postal operators.

69 In recital 163 of the contested decision, the Commission expressly considered that it was necessary to examine the characteristics of the compensation fund in detail in order to assess the compatibility of the aid measure at issue. In particular, it considered that 'setting an appropriate (i.e. proportionate and non-discriminatory) level of contributions from postal operators [was] particularly important' (recital 163 of the contested decision).

70 In addition, the Commission itself explicitly referred not only to the Postal Directive, but also to the compatibility of the measure at issue with that directive, in the part of the contested decision relating to the assessment of the compatibility of the measure at issue (recitals 122, 137, 139, 152 and 163 of the contested decision).

71 Consequently, contrary to the Commission's assertions, the funding arrangements necessary for the operation of the compensation fund are inextricably linked to the object of the aid itself, that is, to compensate PP for its universal service obligations. Thus, without prejudice to the scope of the review which the Commission was required to carry out in that regard in the present case, its line of argument maintaining that the third plea in law is ineffective in that it alleges infringement of Article 7 of the Postal Directive must be rejected.

72 The third plea in law must therefore be examined in its entirety, consisting, in essence, of four parts. By the first part, the applicants argue that the Commission infringed the principle of non-discrimination and other provisions by considering that it was possible to apply the percentage determining the maximum amount of the contribution uniformly to universal service providers and providers of equivalent services (see recital 166 of the contested decision). By the second part, the applicants maintain that the Commission infringed the principle of proportionality by considering that the percentage determining the maximum amount of the contribution and the revenue threshold of PLN 1 million were appropriate (see recitals 168 and 171 of the contested decision). By the third part, the applicants criticise the Commission's conclusion that the compensation fund mechanism was transparent (see recital 176 of the contested decision). By the fourth part, the applicants maintain that the Commission erred, on the one hand, in failing to carry out an appropriate examination of the measure in order to determine whether the universal service obligations entailed a net cost for PP and represented an 'unfair' financial burden on that undertaking and, on the other, in considering that the losses suffered by PP represented such an unfair financial burden (recital 152 of the contested decision).

(b) First part, alleging that the percentage determining the maximum amount of the contribution is discriminatory

73 In essence, the applicants maintain that the Commission made an error of assessment in concluding that the uniform application of the percentage determining the maximum amount of the contribution to universal service providers and providers of equivalent services respected the principle of non-discrimination (recital 166 of the contested decision). In so doing, the Commission infringed paragraph 52 of the SGEI Framework, Article 7(3) to (5) of the Postal Directive and the principle of non-discrimination.

74 In support of this first part, the applicants raise two arguments. On the one hand, they argue that universal service providers and providers of equivalent services are not in a comparable situation and that, consequently, the uniform application of the percentage determining the maximum amount of the contribution infringes the principle of non-discrimination. On the other hand, the applicants maintain that providers of mail services, in the sense of express mail, are in a situation comparable to that of the postal operators required to contribute to the compensation fund and that, consequently, their exemption from the obligation to contribute to the compensation fund infringes the principle of non-discrimination.

75 In the present case, it follows from both recital 163 of the contested decision, implementing paragraph 52 of the SGEI Framework, and Article 7(5) of the Postal Directive that the determination of the postal operators required to contribute to the compensation fund must observe the principle of non-discrimination.

76 In that regard, according to established case-law, the principle of non-discrimination, also called the principle of equal treatment, as a general principle of EU law, requires that comparable situations must not be treated differently and different situations must not be treated in the same way, unless such treatment is objectively justified. The comparability of different situations must be assessed with regard to all the elements which characterise them. These elements must, in particular, be determined and assessed in the light of the subject matter and purpose of the EU act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account (see judgment of 12 December 2014, *Banco Privado Português and Massa Insolvente do Banco Privado Português* v *Commission*, T-487/11, EU:T:2014:1077, paragraph 139 and the case-law cited).

77 Firstly, with regard to the purpose of the measure at issue, it is common ground that it seeks to compensate PP for the net cost arising from its universal service obligations and to finance that compensation by means of a compensation fund to which certain postal operators are required to contribute (recital 12 of the contested decision).

78 Secondly, in order to determine which undertakings may be required to contribute to a compensation fund, it should be noted that recital 27 of the Postal Directive provides that 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 as they display a sufficient degree of interchangeability with the universal service, taking into account the characteristics of the services, including added value features, as well as their intended use and their pricing.

79 It is in view of those principles that it is necessary to determine, on the one hand, whether the universal service provider and the providers of equivalent services are in a comparable situation and, on the other, whether the postal operators required to contribute to the compensation fund and the providers of mail services, in the sense of express mail, are in a comparable situation.

(1) Comparison between the universal service operator and the operators of equivalent services

80 The applicants maintain that the uniform application of the percentage determining the maximum amount of the contribution to both universal service operators and providers of equivalent services is discriminatory in that the situation of the former is different to that of the latter.

81 That is particularly the case when the market on which universal service providers operate ultimately has only one operator, in the present case PP, and is therefore not truly competitive, unlike the market to which providers of equivalent services have access and on which they may carry on business. Through the universal service operation assigned to it, PP furthermore generates proportionally more revenue than that arising from equivalent services, which, as they are subject to competition, can produce only significantly lower profit margins. In those two distinct types of market, the operators concerned cannot therefore be subject to the same level of contribution. The rules for the operation of the compensation fund are all the more discriminatory given that they enable PP to recover, by means of the financing of the net cost of the universal services, the margin that it loses, where applicable, on the equivalent services market, thus enabling it to offer abnormally low prices and to exclude almost all forms of competition, in particular in public procurement procedures putting the relevant undertakings in competition with one another.

82 The Commission argues in response that the applicants are, on the contrary, in a situation which is essentially comparable to that of PP inasmuch as universal and equivalent postal services constitute a single market given that all the operators concerned ultimately carry on the same type of economic activity.

83 The Republic of Poland argues that the uniform application of the percentage determining the maximum amount of the contribution cannot be discriminatory in the present case because, since it applies to operators with different revenues according to the equivalent services provided, such compensation cannot result in discriminatory treatment, as those operators operate in different market conditions.

84 In that regard, firstly, it should be observed that universal postal services and equivalent postal services have similar characteristics. Thus, it must be observed that, in accordance with Article 2 of the Polish Postal Law, equivalent postal services include, in particular, the sending of postal letters and parcels, the weight and dimensions of which are the same as those laid down for universal services. Consequently, even though providers of equivalent services may seek to differentiate themselves from universal services by offering additional services or granting discounts, the fact remains that universal services and equivalent services must be regarded as interchangeable from the perspective of consumers, in view of their intrinsic characteristics.

85 Secondly, it should be borne in mind that the purpose of the measure at issue is to compensate the universal service provider for the net cost arising from its universal service obligations. However, as the measure at issue gives rise to that right to compensation only on the condition that the universal service provision leads to accounting losses, those losses can, by definition, be compensated for only by means of revenue other than revenue from universal service provision. Consequently, by calculating the amount of the contribution for which PP is responsible on the basis of the turnover resulting not only from its provision of equivalent services, but also from its service provision linked to its universal service obligations, the measure at issue in reality requires PP to pay to the compensation fund a contribution of a higher percentage of its turnover from its provision of equivalent services than the contribution of 2% imposed on the other providers of equivalent services.

86 Thirdly, it should be observed that the applicants' claims with regard to possible predatory pricing and cross-subsidisation practices on the part of PP are irrelevant in the present case. Such conduct, which could be examined in the light of Articles 101 and 102 TFEU, is not relevant for examining whether the measure at issue is compliant in the light of the system for the review of State aid.

87 In the light of the foregoing, the complaint relating to the uniform application of the percentage determining the maximum amount of the contribution to both universal service operators and providers of equivalent services must be rejected.

(2) Comparison with mail services

88 The applicants maintain that the obligation imposed on them to contribute to the compensation fund is discriminatory, because the providers of mail services, in the sense of express mail, are not covered by that obligation even though they are in a situation comparable to that of the applicants.

89 The applicants argue, in particular, that such services 'encompass the sending of postal letters and parcels, the weight and dimensions of which are the same as for universal services'. Those mail services are therefore interchangeable with universal services in view of the criteria set down by the Postal Directive, in particular in recital 27 thereof. That applies to their use, their pricing or even the conditions under which they are provided, such as the obligation to comply with a set time limit for the distribution of items, which applies to all postal services, and the tracking of items, which is no longer limited to those mail services and forms part of the standard services offered by the providers of universal services or equivalent services. Lastly, the prices of mail services are not 'considerably different from those of universal services, and [are] even, in many cases, lower'.

90 The Commission and the Republic of Poland argue that those mail services are not comparable to equivalent services. Thus, according to the Commission, only the former provide, on the one hand, for the collection of the postal item directly from the sender and, on the other, for the delivery of that item to the addressee in person. Moreover, according to the Republic of Poland, the difference between those two services lies, in particular, in the price. The price distinguishes mail services from universal postal services, as the former are necessarily more expensive than the latter.

91 In that regard, in the first place, it should be observed that mail services, in the sense of express mail, are different from universal postal services by virtue of their characteristics.

92 Express mail services are distinguished from the universal postal service through the added value which they bring to each customer, value for which that user agrees to pay a higher sum. These services are therefore specific commercial offers, dissociable from the service of general interest and which meet special needs calling for certain additional services not offered by the traditional postal service (judgment of 15 June 2017, *Ilves Jakelu*, C-368/15, EU:C:2017:462, paragraph 24).

93 Thus, according to the case-law of the Court of Justice, collection from the sender's address, together with greater speed or flexibility of distribution and of delivery of a postal item to the addressee are specific services clearly dissociable from the 'traditional postal service', the latter being defined as a service for the benefit of all users throughout the territory of the Member State concerned, provided at uniform tariffs and on similar quality conditions (see, to that effect, judgment of 19 May 1993, *Corbeau*, C-320/91, EU:C:1993:198, paragraphs 15 and 19).

94 Contrary to the applicants' assertions, such findings remain valid today. The applicants furthermore fail to show how 'the changes and transformations … which have taken place in the postal services market' since 1993, the date of the judgment mentioned in paragraph 93 above, have rendered those findings obsolete.

95 Firstly, only the express mail service provides for the direct collection of a postal item from the sender and for the delivery of that item to the addressee concerned in person. Those services constitute added value from the user's perspective in comparison with universal postal services, which require users to bring mail to a collection point themselves and are limited to leaving that mail in the letter box at the address given for the addressee.

96 Contrary to the applicants' assertions, neither the option of registered deliveries with acknowledgement of receipt and a tracking option, nor the 'increase [in the market] in drop-off and receiving points for items' for mail services supports the conclusion that universal services and mail services are sufficiently interchangeable to be regarded as forming part of the same market. On the one hand, with regard to registered deliveries with acknowledgement of receipt, they do not represent the large majority of deliveries covered by the universal service and they still require users to bring the mail to a collection point themselves. On the other hand, with regard to drop-off and receiving points for items, they are merely supplementary services to the services consisting of the collection from the sender's address and delivery to the addressee in person of the postal item entrusted to them.

97 Secondly, even if the obligation to comply with time limits for delivery applied to all postal services, including mail services, it must be observed that those services also offer much faster delivery options. Those service offerings also constitute added value from the user's perspective in comparison with universal postal services.

98 Consequently, express mail services, precisely because of the specific nature of their service offerings and their added value, cannot be regarded as interchangeable with universal postal services.

99 In the second place, the applicants also maintained that, in certain Member States, the obligation to finance the net cost of the universal postal service is incumbent upon all providers of postal services and that, consequently, providers of mail services are in a comparable situation to the other providers of services falling within the scope of the universal service.

100 However, the Instytut Pocztowy's report entitled 'The institution of designated postal operator in the European Union', appended to the application and relied on by the applicants, is not sufficient to substantiate such an assertion. Whilst that report indicates that a contribution to a compensation fund may be sought, in France and Spain, from 'all operators', in Portugal, from 'all licensed operators', in Austria, from 'all licensed operators whose revenue exceeds EUR 1 million', and, in Greece, from 'all authorised postal operators', it should be noted that it does not provide information which would make it possible to identify precisely the providers in fact liable to contribute to the various compensation funds, such as, for example, the calculation of the contribution of each provider in the countries in question. Thus, even though all the providers of postal services are expected to contribute to the compensation fund, if each provider's contribution is calculated in proportion to the number of postal items which it transports within the scope of the universal service, providers of mail services could in fact be exempted from contributing. Moreover, when questioned on that point at the hearing, the Commission stated that it had examined the practice of Member States in that matter and had reached the conclusion, not disputed by the applicants, that none of the Member States for which information was available to it considered, as of that date, that mail services, in the sense of express mail, were equivalent to the universal postal service. In any event, it must be observed that the considerations set out in paragraphs 91 to 98 above, relating to the specific nature of those services, are sufficient in themselves to enable the Court to reject the argument put forward here by the applicants.

101 In the third place, the argument that the obligation to contribute to the compensation fund put in place in the parallel telecommunications sector is more evenly apportioned than the obligation applied in the postal sector is also irrelevant for assessing observance of the principle of non-discrimination. Whilst such a factor may, assuming that it is relevant, be taken into account with regard to the assessment of whether or not the level of contribution adopted is proportionate (see paragraph 135 et seq. below), it does not, by contrast, have any bearing on the complaint alleging that the compensation fund put in place in the postal sector is discriminatory, which must be assessed by reference only to the operators carrying on business in that sector.

102 In those circumstances, it must be concluded that the exclusion of mail services from the financing of the compensation fund does not constitute infringement of the principle of non-discrimination. The Commission therefore did not err in considering, in recital 166 of the contested decision, that the uniform application of the percentage determining the maximum amount of the contribution to all operators in the postal services market, based on their provision of universal or equivalent services, ensured a non-discriminatory contribution, as each operator contributed in proportion to the revenue from its own activities.

103 In the light of the foregoing, the first part must be rejected in its entirety.

(c) Second part, alleging that the percentage determining the maximum amount of the contribution and of the revenue threshold liable to contribution are disproportionate

104 In essence, the applicants maintain that the Commission made an error of assessment in concluding that the percentage determining the maximum amount of the contribution, that is, 2% of the relevant turnover, and the revenue threshold of PLN 1 million were appropriate (see recitals 168 and 171 of the contested decision). They maintain that the effect of those aspects of the system under consideration was to 'foreclose the postal services market, or [that they] at least [caused] significant distortions of competition'.

105 In that regard, the applicants argue that the percentage determining the maximum amount of the contribution was determined without the Polish authorities' having gathered sufficient information, in the absence, in particular, of in-depth market studies, and without their having consulted all the parties concerned. That percentage was determined purely with a view to avoiding the use of public funding to ensure the viability of the compensation fund.

106 They argue that the fact that the percentage determining the maximum amount of the contribution is not proportionate is, in addition, confirmed by the fact that the compensation fund provided for in the parallel telecommunications services market specifies a maximum level of contribution of only 1% of revenue, and not 2%.

107 The applicants add that, contrary to what the Commission indicates in recital 167 of the contested decision, the level of 2% was not set during the public consultation phase, but after that consultation had finished.

108 Moreover, with regard to the revenue threshold starting from which a contribution is required, the applicants challenge the relevance of the method adopted by the Polish authorities, which was validated by the Commission. That method consisted of assessing that threshold by reference to the threshold adopted for telecommunications operators and applying a corrective weighting to that threshold to take account of the smaller size of the postal market, in which profitability and revenue are lower. According to the applicants, however, no corrective weighting should have been applied and the same threshold as that adopted for the parallel telecommunications market, namely PLN 4 million, should have been adopted by the Polish authorities. Like the solution adopted for the telecommunications market, the threshold should have encompassed the revenue generated by all the activities of the postal sector, and not only those falling within the scope of the universal service. Ultimately, the revenue threshold adopted means that the applicants' activities in the equivalent services sector are not profitable, whilst they are nevertheless obliged to contribute to the compensation fund.

109 Lastly, the applicants claim that the Commission failed to consult them on the level of their revenue and profits from equivalent services, so that the Commission, also for that reason, wrongly interpreted the information provided by the Polish authorities.

110 The Commission contends that that complaint should be rejected. It argues that the percentage determining the maximum amount of the contribution used to finance the universal service in the telecommunications services sector and the revenue threshold applicable to companies operating in that market cannot be the same as those applicable to the financing of the universal postal service, since the parallel telecommunications sector, due to the nature and scope of its services, generates higher revenue and profits than the postal sector.

111 Moreover, the Commission argues that the failure on the part of the Polish authorities to consult all the operators, assuming that it is established, cannot effectively be invoked against the contested decision. In any event, in view of the information which was available to the Commission when it adopted the contested decision, the compensation arrangements could be regarded as sufficiently appropriate. That information concerned, in particular, the profitability level of 7.6% of the Integer.pl group, to which the applicants belong, and the profitability level of 5.5% recorded for PP, and the revenue threshold, inasmuch as the threshold of PLN 1 million enabled any new operator, taking account, in particular, of the actual structure of the postal services market, to delay its contribution to the compensation fund and, consequently, avoided discouraging other operators from potentially entering the market.

112 The Republic of Poland maintains, in essence, that the level of contribution was not disproportionate inasmuch as it neither exposed competitors to the risk of being driven out of the postal services market, nor dissuaded new operators from freely entering it.

113 As a preliminary point, it should be noted that the applicants' arguments do not relate to the proportionality of the compensation granted to PP as universal service provider, but only to the arrangements for its funding. In particular, the applicants dispute the merits of the Commission's assessments that the percentage determining the maximum amount of the contribution (that is, a level of 2%) and a revenue threshold set at PLN 1 million are in line with the principle of proportionality.

114 In that regard, it should be borne in mind that the review of proportionality constitutes one of the reviews which the Commission is required to carry out in the context of its assessment of the compatibility of State aid measures with Article 106(2) TFEU (judgment of 3 December 2014, *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 147).

115 In addition, according to settled case-law, the review of the proportionality of a measure for discharging an SGEI mission is limited to ascertaining whether the measure provided for is necessary in order for the SGEI mission in question to be capable of being performed in economically acceptable conditions or whether, on the other hand, the measure in question is manifestly inappropriate in view of the objective pursued (see judgment of 3 December 2014, *Castelnou Energía* v *Commission*, T-57/11, EU:T:2014:1021, paragraph 150 and the case-law cited).

116 Similarly, with regard to the review carried out by the Court of the assessments made by the Commission in a decision adopted at the end of the preliminary procedure for reviewing aid, it should be borne in mind that that review is to be carried out in the light of the information available to the Commission when such a decision was adopted (see judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraph 81 and the case-law cited).

(1) Proportionality of the percentage determining the maximum amount of the contribution

117 It is apparent from the case file that, at the end of the preliminary review procedure and in the absence of detailed information relating to the profitability levels of the postal operators required to contribute to the compensation fund, the Commission primarily relied, for the purpose of verifying that the

percentage determining the maximum amount of the contribution was proportionate, on PP's profitability level in respect of equivalent services and on earlier decisions concerning other Member States (recitals 167 to 169 of the contested decision).

118 In that regard, firstly, the Commission was entitled to take into consideration PP's profitability level in respect of equivalent services. Admittedly, as the Commission acknowledged in footnote 66 of the contested decision, to which recital 168 of that decision refers, such a comparison may appear imperfect on the ground that PP benefits from economies of scale from which the other operators required to contribute to the compensation fund do not. The Commission could nevertheless reasonably consider that the other operators were capable of achieving a profitability level similar to that of PP, the historic public operator, through their greater effectiveness, efficiency and flexibility and, consequently, their greater capacity to focus on the most profitable parts of the market (see footnote 66 of the contested decision).

119 That assessment is all the more plausible given that the profitability level taken into consideration by the Commission, namely a level of around 5.5%, was similar to that emerging from studies carried out in connection with previous decisions of the Commission, relating to Greece and Belgium, concerning other Member States' historical postal operators, which are mentioned in footnote 67 of the contested decision, to which recital 168 of that decision refers. In addition, even assuming that the Commission did not have a lot of experience in the postal services sector, the information derived from the experience acquired in connection with those decisions was still available to it. At the time of the review of the Greek compensation fund, the Commission observed, for example, that the maximum contribution sought from the competitors of the historic operator would be greater than that operator's own profits in urban areas, which was also a reserved sector, which led it to open a formal investigation procedure in that regard. In the present case, by contrast, the Commission could legitimately observe that the percentage determining the maximum amount of the contribution did not exceed the profitability level of 5.5%.

120 Moreover, it should be observed that the applicants' objection to PP's profitability level being taken into account to assess the percentage determining the maximum amount of the contribution is contradicted by the profitability levels which they themselves mention in their applications. Thus, they indicate that they achieved a profitability level of 5.6% for their provision of postal services in 2013, which is the only year which is relevant for the present dispute and for which the applicants were required to contribute to the compensation fund. Even assuming that those levels concern all the applicants' postal activities and not only their provision of equivalent services, the applicants nevertheless admit that those levels 'also make it possible to set out the results of that category of activities', that is to say the equivalent services category, due 'to the standardised costs structure'.

121 In that regard, contrary to the applicants' assertions, it is not apparent from the contested decision, and in particular recital 168 thereof, that the Commission took the view that the operators required to contribute to the compensation fund would achieve a profitability level of 5.5% for their provision of equivalent services after deduction of the contribution to the compensation fund. On the contrary, it is apparent from the case files in question that the Commission's analysis took account of the profitability level of such services before, and not after, the application of the level of contribution.

122 Similarly, the fact that the profitability level of the Integer.pl group, mentioned by the Commission in footnote 68 of the contested decision in support of its reasoning, concerns all the activities carried on by that group, and not only those falling within the scope of equivalent services, cannot be sufficient to call into question the plausibility of the assessment carried out by the Commission in the contested decision. It must be observed that the Commission does not claim that the profitability level for the equivalent services sector is at issue, but the profitability level for the whole group, which consists of eight companies, two of which directly compete with PP in offering equivalent services. Consequently, whilst the overall profitability level of the Integer.pl group does not in itself make it possible to substantiate the Commission's reasoning relating to the percentage determining the maximum

amount of the contribution, it constitutes evidence capable of strengthening the plausibility of the argument that profitability of around 5.5% could, in all probability, be achieved by PP's competitors in the equivalent services sector.

123 Secondly, the Commission did not err in failing to reject that reasoning on its part in view of the information provided by the Ogólnopolski Związek Pracodawców Niepublicznych Operatorów Pocztowych (National Private Postal Operators' Association) ('the OZPNOP'), in a letter addressed to the Commission on 24 July 2015, in which reference is made, on the one hand, to a letter from Inpost presented to the Polish authorities at the time of the legislative work which led to the adoption of the Postal Law, in which Inpost stated that 'the lower limit of profitability [of postal services in Poland was] currently between 1 and 2.5% profits', and, on the other, to the statement of the OZPNOP's representative before the Polish authorities on 5 December 2012, in which he indicated that '[as of that date], the profitability or lower limit of profitability of commercial operators … [was fluctuating] between 1 and 2.5%'.

124 The profitability level mentioned in the OZPNOP's letter to the Commission was calculated by taking into consideration all postal operators, whereas the only operators required to contribute to the compensation fund are the largest operators in that sector, being those whose turnover exceeds PLN 1 million. The Commission was therefore entitled to consider that such a level less accurately represented the situation to be assessed than PP's profitability level in respect of equivalent services or the profitability levels observed in other Member States. Moreover, it is not disputed that the profitability level mentioned by the OZPNOP concerns only 2012 and therefore does not cover the period concerned by the contested decision.

125 In any event, the applicants have failed, in the course of the proceedings, to present evidence capable of establishing that the average profitability level mentioned in the OZPNOP's letter to the Commission was both factually accurate and relevant. In particular, they have never indicated what their own profitability level was, in comparison, in particular, with the levels used by the Commission to assess the percentage determining the maximum amount of the contribution.

126 Thirdly, with regard to the argument based on the fact that the percentage determining the maximum amount of the contribution to the compensation fund provided for in the parallel telecommunications sector is only 1%, that fact cannot be sufficient to establish that a level set at 2% in the postal sector is disproportionate.

127 It is not apparent from the case file that those sectors are comparable, either in terms of operators or in terms of revenue generated. In that regard, contrary to what the applicants argue in the replies, a lower revenue threshold does not justify the application of a level which is also lower, but implies, on the contrary, the application of a higher level, precisely in order to offset the narrower basis for the calculation of contributions.

128 Consequently, the Commission was entitled to consider that it was reasonable to take into consideration a profitability level in the order of 5.5% in respect of universal or equivalent services in Poland and that, consequently, the percentage determining the maximum amount of the contribution to the compensation fund, that is, at most, 2% of the revenue generated by the provision of those services, was proportionate.

129 That assessment is not called into question by the applicants' argument that the percentage determining the maximum amount of the contribution to the compensation fund had not been set during the initial national consultation phase, but had been decided only at the end of the procedure. Such a procedural line of argument, assuming that it is well founded, is not such as to support the conclusion that, for that reason, the percentage thus set was disproportionate.

130 Similarly, the applicants' argument seeking to challenge the national procedure followed by the Polish authorities, which allegedly failed to gather sufficient information, is not relevant for the examination of the merits of the Commission's assessments and the compatibility of the measure with the rules governing State aid.

131 The evidence relating to PP's pricing policy, invoked by the applicants in their response to the measure of organisation of procedure, and thereafter at the hearing, also has no bearing on the proportionality of the percentage determining the maximum amount of the contribution. In addition, that evidence concerns the years 2016 to 2018, that is, years which were later than the relevant period.

132 As to the argument alleging that the profitability level was determined purely in order to avoid using the State budget to finance the compensation fund at issue, even assuming that that argument is well founded, it does not mean, however, that such a level is necessarily disproportionate in that it enables PP to receive funding in excess of the net cost of the service assigned to it.

133 It is sufficient to point out in that regard that the Postal Directive provides for precisely the possibility that such a fund may be financed 'by fees' imposed on the providers and users of the service in question, with no contribution from the State budget. Moreover, it is apparent from recital 174 of the contested decision that the Polish State authorities were, in any event, required to contribute EUR 1.5 million to the compensation fund for 2013, that is, an amount greater than that of EUR 1 million which the postal operators other than PP were required to contribute to that fund in respect of that year.

134 In those circumstances, the complaint alleging that the percentage determining the maximum amount of the contribution set by the measure at issue is disproportionate cannot be upheld.

(2) Revenue threshold determining the operators liable to contribute

135 As a preliminary point, it should be observed that the Commission considered that setting the revenue threshold at PLN 1 million for the purpose of determining the operators required to contribute to the compensation fund was in line with the principle of proportionality (recitals 170 and 171 of the contested decision). Thus, going back over the reasoning of the Polish authorities on that point and taking account of the actual structure of the postal services market, it concluded that it was appropriate to adopt a higher revenue threshold than the threshold of PLN 0.6 million which would have been adopted if the same proportion as in the telecommunications services sector of the total revenue generated in the market for such services to the threshold of the revenue obtained by the operators in that sector had been maintained for the postal services sector. The Commission pointed out that such a threshold enabled any new operator to delay its contribution to the fund and thus strengthened the proportionality of the level of the contribution. In addition, the Commission took the view, in recital 173 of the contested decision, that the future legislative amendment envisaged by the Republic of Poland, consisting of exempting all operators below the first PLN 1 million, was such as to improve the design of the compensation fund, inasmuch as, when the contested decision was taken, the impact of that fund on competition was limited, given the low amounts involved and its very limited duration in time.

136 In that regard, firstly, with respect to the argument that the same threshold as that adopted for the parallel telecommunications sector should have been applied to the postal services sector, it should be observed that the applicants cannot coherently maintain that a threshold of PLN 4 million would have been justified in the present case when, at the same time, they maintain that, inasmuch as the threshold of PLN 1 million could be reached by only a very small number of operators, the contribution sought from each operator was consequently disproportionate. If that were the case, the same would also apply, for the same reason and *a fortiori*, in the case of a threshold set at a higher level. Conversely, the applicants have failed to provide any evidence to prove that an increase in the

threshold would have significantly diminished the number of operators required to contribute to the fund, whereas the Commission took the view that a higher threshold would not have led to a decrease in the number of operators required to pay the contribution in question.

137 Moreover, it should be added that, of the 71 operators active in the equivalent services sector in 2013, representing around 5% of the revenue of that sector, only 10 of them were liable to contribute to the fund, taking account of the criteria adopted by the Polish Postal Law (see paragraph 10 above). It is also apparent from the case file that, in 2013, PP was required to provide 95% of the financing of the fund.

138 Secondly, with regard to the argument that the revenue threshold should have taken account of all postal revenue, it must be rejected inasmuch as it is based on the incorrect premiss that mail services are equivalent to the universal service (see paragraphs 91 to 98 above).

139 Lastly, it is not disputed that the mechanism of compensation funds in the postal sector is a novelty in the present case, so that the analyses which are carried out in respect of it cannot yet be experience based. The Commission was therefore correct, relying also on telecommunications sector data, to take the view that, taking account of the specific features of the postal sector, a threshold of PLN 1 million was not disproportionate in that, on the one hand, it maintained competition in the equivalent postal services market and, on the other, it ensured that an appropriate number of operators would be required to contribute to the fund.

140 In the light of the foregoing, the Commission did not err in considering in the contested decision that the revenue threshold determining the operators liable to contribute was in line with the principle of proportionality.

141 The present complaint must therefore be rejected, as must, consequently, the second part in its entirety.

(d) Third part, alleging infringement of the principle of transparency

142 In essence, the applicants maintain that the Commission made an error of assessment in concluding that the compensation fund mechanism was transparent (see recital 176 of the contested decision). According to the applicants, the Commission was not entitled to conclude that the national compensation scheme respected the principle of transparency, since, contrary to the Polish authorities' assertions, notwithstanding the postal operators' objections, no actual public consultation took place. Only the initial objectives of the Polish Postal Law gave rise to such a public consultation, and not the final version of the draft legislation, in particular the part concerning the level of contribution, which was increased from 1 to 2% at a meeting *in camera* of Poland's Council of Ministers.

143 The Commission argues in response that the interested parties had the opportunity to express their views on the increase in the level to 2% during the parliamentary proceedings relating to the approval of the Polish Postal Law, the applicants having furthermore acknowledged themselves that setting such a level had met with strong opposition on the part of the postal operators concerned during the legislative work in the Diet (Lower Chamber of Parliament) of the Republic of Poland.

144 The Republic of Poland also maintains that that argument is entirely unfounded.

145 In that regard, it is sufficient to recall the considerations set out in paragraphs 44 to 55 above in response to the second plea in law, with which the present plea in law overlaps to a large extent. It follows that a public consultation as referred to in paragraph 14 of the SGEI Framework, taking account of the postal operators' observations, did indeed take place and that the transparency requirements were respected, so that the main premiss of the present plea in law has no factual basis.

146 Consequently, the third part must be rejected.

(e) Fourth part, alleging infringement of the unfair financial burden condition laid down in Article 7(3) of the Postal Directive

147 In essence, the applicants maintain that the Commission made an error of assessment, on the one hand, in failing to carry out a proper examination in order to determine whether the universal service obligations entailed a net cost for PP and represented an 'unfair' financial burden on that undertaking and, on the other, in considering that the losses suffered by PP represented such an unfair financial burden (recital 152 of the contested decision).

148 Thus, the applicants maintain that the Commission was wrong to take the view that the Polish authorities had correctly transposed the Postal Directive, when they had not respected the criteria identified by the case-law of the Court of Justice for determining when a financial burden must be regarded as unfair for the operator designated to provide the universal postal service, in accordance with Article 7(3) of the Postal Directive, and thus give rise to compensation.

149 In that regard, according to the applicants, the existence of a deficit is not sufficient to justify the financing of the net cost, but the deficit must also be excessive, that is to say it must go beyond the capacity of the undertaking concerned to support it with its own resources, namely, in particular, the quality of its equipment, its economic and financial situation and its market share.

150 Moreover, also according to the applicants, to assess the existence of an unfair burden only on the basis of the losses suffered by the universal service operator in order to have them financed by a compensation fund would lead to the mismanagement of that service, as the more significant the operator's losses, the greater the financing which it could obtain for the net cost of the universal service.

151 The Commission argues in response, in essence, that it was not required, as part of its review of the compatibility of the public service compensation granted to PP, to assess whether the Postal Directive was correctly transposed by the Polish authorities on that point, or whether an unfair financial burden existed which was such as to justify the creation of the compensation fund. Its review consists of determining whether the conditions of the compensation are compatible with the internal market, that is to say whether the obligation to contribute does not have an adverse effect on competition in the postal services market. Financing for the net cost of a universal service which is put in place irrespective of whether there is an unfair financial burden on the designated operator is, for that reason, not necessarily incompatible with the internal market, in view of the provisions of the FEU Treaty applicable to State aid. As the questions are independent of one another, the complaint is ineffective.

152 In that regard, it should first of all be borne in mind that Article 7(3) of the Postal Directive provides as follows:

'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:

…

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

153 Firstly, without prejudice to the question whether, and to what extent, in the present case, the Commission was required to determine whether the measure at issue was compliant with other EU rules, including those of the Postal Directive (see the case-law cited in paragraphs 63 to 66 above), it is apparent from the wording of Article 7(3) of that directive that it is for the Member State concerned to determine whether the universal service obligations in question represent an unfair burden on the designated provider. That is the situation in the present case, inasmuch as it falls to the UKE to carry out that assessment under the Polish Postal Law which implemented the Postal Directive (recital 16 of the contested decision).

154 Secondly, with regard to the argument that the classification, by the UKE, of PP's accounting losses resulting from its universal service provision as an unfair financial burden was contrary to Article 7(3) of the Postal Directive, it is sufficient to observe that that argument is based on a confusion of the concepts of net cost and accounting losses referred to in that provision, as the net cost of universal service obligations can give a right to compensation only to the extent that it represents an unfair financial burden on the universal service provider.

155 Similarly, in the judgments of 6 October 2010, *Commission* v *Belgium* (C-222/08, EU:C:2010:583), and of 6 October 2010, *Base and Others* (C-389/08, EU:C:2010:584), cited by the applicants in support of their argument, the Court of Justice merely stated that not every net cost automatically represented an unfair financial burden giving rise to compensation.

156 It must be observed that the measure at issue does not give rise to any automatic right to compensation for the net cost of PP's universal service obligations. It is apparent from recitals 16, 84 to 87 and 144 of the contested decision that the right to compensation granted to PP arises only if the universal service provision leads to accounting losses. In addition, that right to compensation corresponds to the lower of the amounts relating either to the accounting losses resulting from the universal service provision or to the net cost of the universal service obligations. In this way, as the Commission points out in recital 144 of the contested decision, the measure at issue is more restrictive than the SGEI Framework, which would potentially have allowed the net cost of the universal service obligations to be compensated in full. Consequently, making the right to compensation for the net cost of the universal service obligations dependent on and limited to the losses resulting from the universal service provision is, any event, not capable of infringing Article 7(3) of the Postal Directive.

157 Thirdly, with regard to the argument that the methodology chosen does not encourage PP to be efficient, on the one hand, it should be observed that the net cost of the universal service obligations is calculated taking into account efficiency adjustments so as not to take account of certain inefficiencies on the part of PP set out in recital 34 of the contested decision. On the other hand, each year PP is required to submit a plan of corrective actions seeking to eliminate or, at least, to limit the losses resulting from its universal service provision (recital 15 of the contested decision). Consequently, the applicants' arguments that the financing arrangements for the compensation fund result in its ultimately covering the possible mismanagement of the universal service must be rejected.

158 Fourthly, the applicants maintain, essentially, that PP's 'economic potential' enabled it to meet its universal service obligations, because the liberalisation of the sector enabled it to significantly reduce its costs by removing, in particular, several hundred post offices.

159 By means of such observations, however, the applicants in no way show that such a reduction in the cost of the universal service made the burden of the net cost fair and, consequently, that the financing of the accounting losses resulting from the universal service provision was incompatible with the development of trade. Such observations simply highlight the steps which PP took to be more efficient by reducing its universal service costs, thus meeting the requirements of the SGEI Framework.

160 In the present case, the Commission was required to assess, in particular, whether the amount of that compensation did not exceed what was necessary to cover the net cost of discharging the public service obligations by taking into account not potential or future costs, but actual costs, in fact incurred in the discharge of the public service obligations (see, to that effect, judgment of 24 September 2015, *Viasat Broadcasting UK* v *Commission*, T-125/12, EU:T:2015:687, paragraphs 87 and 88). The applicants have failed to show that the compensation granted by the measure at issue, even though it does not necessarily cover the entirety of the net cost of the universal service obligations, has a negative effect on the market in question.

161 In those circumstances, the fourth part must be rejected, as must, consequently, the third plea in law in its entirety.

4. Fourth plea in law, alleging infringement of Article 7(1) and Article 8 of the Postal Directive

162 The applicants maintain, in essence, that, by having 'accepted the financing of the cost of the universal service by [means of] exclusive and special rights granted to [PP]', as listed in recitals 51 to 56 of the contested decision, the Commission erred in law in that it failed to respect Article 7(1) and Article 8 of the Postal Directive. In any event, according to the applicants, the grant of those rights cannot be justified.

163 The Commission first of all argues that, as part of its duty to review the compatibility of the aid, it was not required to determine whether the Polish Postal Law was compliant with the provisions of the Postal Directive. In any event, it under no circumstances agreed, by the contested decision, to grant such rights to PP, but simply examined whether the method of calculation by the Polish authorities of the net cost was compliant with the SGEI Framework.

164 The Republic of Poland contends that the plea in law should be rejected. It explains, in that regard, that the purpose of the examination by the Commission of the various exclusive and special rights was not to grant specified advantages to PP, but to calculate the net cost of the universal service provision. Moreover, the value of such rights was deducted from the net cost of the universal service obligations, so that the plea in law is ineffective.

165 In that regard, Article 7(1) of the Postal Directive provides as follows:

'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.'

166 Article 8 of the Postal Directive also specifies that the provisions of Article 7 'shall be without prejudice to Member States' right to organise the siting of letter boxes on the public highway, the issue of postage stamps and the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation'.

167 Without prejudice to the question whether, and to what extent, in the present case, the Commission was required to determine whether the measure at issue was compliant with other EU rules, including those of the Postal Directive (see the case-law cited in paragraphs 63 to 66 above), it must be observed that the applicants have failed to put forward any argument capable of establishing that the rights granted to PP, as specified in recitals 51 to 56 of the contested decision, did not fall within the scope of the exception expressly provided for by Article 8 of the Postal Directive and, consequently, capable of proving the error constituted by the alleged infringement of that directive.

168 In the light of the foregoing, this plea in law must be rejected.

5. Fifth plea in law, alleging infringement of Article 102 and Article 106(1) TFEU

169 The applicants maintain that the public service compensation granted to PP strengthens its dominant position, producing an anti-competitive foreclosure effect on the market, within the meaning of the Communication from the Commission on guidance on enforcement priorities in applying [Article 102 TFEU] to abusive exclusionary conduct by dominant undertakings (OJ 2009 C 45, p. 7). In those circumstances, the contested decision is contrary to the combined provisions of Article 102 and Article 106(1) TFEU.

170 The Commission contends that the plea in law should be rejected.

171 In that regard, it is sufficient to observe that the plea in law, as formulated in the applications, and assuming that it is effective, in any event is inadmissible, in the absence of sufficient detail to assess its merits.

172 The arguments presented in the replies in support of this plea in law cannot invalidate that conclusion.

173 Thus, in the first place, with regard to the arguments concerning Inpost's supposed losses in 2015 or based on its decision in 2016 to cease its postal service activities, they are not relevant in the present case, given that, as observed in paragraph 26 above, the compensation fund was not activated in 2015 and that, as specified in paragraph 25 above, the contested decision does not concern the period after that year.

174 In the second place, assuming that the Commission was not entitled to conclude that the profitability level of equivalent service activities was 5.5% inasmuch as it considered, at the same time, that the weighted average cost of capital was significantly higher, as it was set at 10.82%, and assuming that the applicants actually intended to raise such an argument, the applicants fail to show how that would help, in the absence of further details, to establish abuse of PP's dominant position, which the applicants intend to challenge here.

175 In the light of the foregoing, the fifth plea in law must therefore be rejected.

6. Sixth plea in law, alleging infringement of Article 16 and Article 17(1) of the Charter, read in conjunction with Article 52 thereof

176 The applicants maintain that, by imposing a mandatory disproportionate contribution on them, the contested decision results in an unjustified limitation of their freedom to conduct a business and of their right to property, as protected by Article 16 and Article 17(1) of the Charter, read in conjunction with Article 52 thereof.

177 The Commission and the Republic of Poland dispute the merits of the applicants' arguments.

178 It should be noted that the applicants fail to set out, to the requisite legal standard, the matters of fact capable of substantiating such a plea in law and of showing how the compensation at issue disproportionately limited their right to property or their freedom to conduct a business, that is to say in a manner exceeding what is appropriate and necessary to ensure the proper implementation of the universal service in question.

179 Moreover, on the one hand, a possible limitation of those fundamental rights would be the result not of the contested decision, by which the Commission did not challenge the aid measure which had been notified to it, but of the Polish Postal Law itself or, ultimately, of the individual decision applying it, which the applicants, as is apparent from the case file, did not challenge, from that perspective, before the competent national courts. On the other hand, it should also be found that, since it has not

been established that the compensation scheme at issue impedes the commercial exploitation by the operators of postal services, in Poland, of services equivalent to the universal service, neither can it breach the applicants' freedom to conduct a business or their right to property. Such a contributory measure in no way impairs the enjoyment, by the applicants, of their right to pursue economic activities on the market in question, or the exercise of their right to property in the production and commercialisation of those services, in particular of their intellectual property rights.

180 In those circumstances, the sixth plea in law must be rejected.

7. Seventh plea in law, alleging breach of the obligation to state reasons

181 The applicants maintain that the contested decision does not contain sufficient reasoning and they invoke, in that regard, the following nine grounds: (i) the Commission 'did not gather any information relating to the profit achieved on sales by operators other than PP'; (ii) '[it] wrongly found that no information was available to it on the operational profitability of operators other than PP[,] the reason why it relied solely on PP's information'; (iii) '[it] wrongly accepted a rate of return on capital of 10.82% for PP, whilst acknowledging that a level of operational profitability of 5.5% was sufficient for competitors'; (iv) it failed to 'explain in the grounds [of the contested decision] the reasons why a level of contribution capped at 2% of revenue was appropriate'; (v) it also failed to 'specify, in the grounds [of the contested decision], the reasons why it had not regarded the obligation to contribute to the fund as discriminatory'; (vi) '[it] incorrectly concluded that the draft Postal Law had been the subject of a public consultation in 2012': (vii) '[it] considered[, also] incorrectly, that the Polish authorities had set the level of contribution to the [compensation] fund at 2% and the threshold at PLN 1 million'; (viii) '[it] wrongly concluded that the postal operators did not share their observations' and, lastly, (ix) '[it] did not take account, as an aggravating factor, of the failure to issue a call for tenders for the purposes of assessing the effect on competition'.

182 The Commission and the Republic of Poland contend that this plea in law should be rejected in its entirety.

183 As a preliminary point, it should be borne in mind that the statement of reasons for a Commission decision on State aid, required by the second paragraph of Article 296 TFEU, must disclose in a clear and unequivocal manner the reasoning followed in that regard by the Commission, in such a way as to enable the persons concerned to ascertain the reasons for the measure and to enable the competent court to exercise its power of review. The requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations. It is not necessary for the reasoning to go into all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 2 December 2009, *Commission* v *Ireland and Others*, C-89/08 P, EU:C:2009:742, paragraph 77 and the case-law cited). Moreover, a decision by the Commission not to raise objections, adopted at the end of the preliminary review procedure, must set out the essential reasons enabling interested third parties to understand the elements on the basis of which the Commission took the view that it was not faced with serious difficulties in assessing the compatibility of the aid at issue with the internal market (see, to that effect, judgment of 22 December 2008, *Régie Networks*, C-333/07, EU:C:2008:764, paragraphs 64 and 65 and the case-law cited).

184 It is clear from reading as a whole seven of the nine grounds summarised in the paragraph above that the applicants have mistaken, in essence, the merits of the matters of fact and law on which the contested decision is based for a lack of or an insufficient statement of reasons for that act, so that such complaints must be regarded as ineffective (see, to that effect, judgment of 2 April 1998,

Commission v *Sytraval and Brink's France*, C-367/95 P, EU:C:1998:154, paragraphs 65 to 67). An 'incorrect statement of reasons', even assuming that that is established, does not automatically mean that the statement of reasons is 'absent' or 'inadequate' (see, to that effect, judgment of 18 June 2015, *Ipatau* v *Council*, C-535/14 P, EU:C:2015:407, paragraph 37).

185 That applies to the first three and last four complaints, as set out in paragraph 181 above, which seek, in essence, to call into question the merits of the contested decision for lack of sufficient evidence (first complaint), material errors of fact (second, sixth and eighth complaints), and errors of assessment and of law (third, seventh and ninth complaints).

186 With regard to the fourth complaint, alleging that the Commission, according to the applicants, did 'not explain in the grounds [of the contested decision] the reasons why a level of contribution capped at 2% of revenue was appropriate', it should be borne in mind that, in recital 168 of the contested decision, the Commission considered that the percentage determining the maximum amount of the contribution, set at 2% of turnover, could be regarded as proportional, given that it was capped at a level which represented only a fraction of PP's profitability level in the area of equivalent services. The Commission added that it expected that PP's competitors could also achieve such profitability and that it could therefore be reasonably concluded that that level of contribution would not drive or keep efficient competitors out of the market.

187 It is apparent from that paragraph that the Commission addressed the reasons why it considered that the percentage determining the maximum amount of the contribution was appropriate in the present case. Since the Commission indicated that the percentage represented only a fraction of PP's profitability level in the area of equivalent services – a profitability level which, according to the Commission, the providers obliged to contribute to the compensation fund could achieve – and that it would not therefore drive or keep efficient competitors out of the market, the Commission duly set out the reasons why it regarded that percentage as appropriate. In addition, that paragraph of the contested decision enabled the applicants to ascertain the reasons for the measure in order to defend their rights, on the one hand, and the Courts of the European Union to review the legality of the decision, on the other. The applicants were able to dispute the merits of those assessments by claiming, in particular, that the Commission used PP's profitability level as the sole point of reference for the evaluation of the appropriateness of the percentage of 2%, even though the OZPNOP had informed it of the fact that the profitability level of PP's competitors was between 1 and 2.5%. In addition, as set out in paragraph 113 et seq. above, the Court has been able to rule on that claim. Consequently, the applicants are wrong to claim a failure to state reasons in that regard.

188 Lastly, with regard to the fifth complaint, alleging that the Commission also failed to 'specify, in the grounds [of the contested decision], the reasons why it had not regarded the obligation to contribute to the fund as discriminatory', it should be observed that recitals 10, 11 and 166 of the contested decision are worded as follows:

'(10) The Postal Law also defines the "services comprising universal postal services" (hereinafter referred to as "inter-changeable services"). According to Article 3(30) of the Postal Law, these services include "letter items and postal parcels with weight and dimensions defined for universal services[,] and items for the blind, not provided by the operator designated to provide universal services [pursuant] to the obligation to provide universal services". The inter-changeable services do not comprise postal services consisting in the clearance, sorting, transport and delivery of courier items.

(11) The Polish authorities confirm that these services are inter-changeable with universal services according to recital 27 of the third Postal Directive, which reads: "In order to determine which undertakings may be required to contribute to a compensation 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, as they display

inter-changeability to a sufficient degree with the universal service, taking into account the characteristics of the services, including added value features, as well as the intended use and the pricing. These services do not necessarily have to cover all the features of the universal service, such as daily delivery or complete national coverage”.

…

(166) If the uniform percentage indicator obtained is larger than 2%, the contribution due by each operator is calculated as 2% (the cap) of the relevant revenue of each service provider liable to contribute. Since this percentage indicator applies uniformly to all market participants, each operator contributes the same proportion of revenues in the segment of universal services and inter-changeable service[s]. As such, the contribution required from each operator can be considered non-discriminatory.’

189 Since the Commission indicated that, in accordance with the Polish Postal Law, equivalent services did not include mail services and stated that, to determine which undertakings contributed to the fund, it was necessary to examine whether the services provided by those undertakings could, from the user’s perspective, be regarded as services falling within the scope of the universal service, it implicitly, but undoubtedly, considered that mail services were not, from the users’ perspective, services falling within the scope of the universal service. The Commission took the view that, as the percentage determining the maximum amount of the contribution applied uniformly to all market participants, the contribution required from each provider was not discriminatory. In addition, those paragraphs of the contested decision enabled the applicants to ascertain the reasons for the measure in order to defend their rights, on the one hand, and the Courts of the European Union to review the legality of the contested decision in that regard, on the other. The applicants were able to dispute the merits of those assessments by claiming, in particular in paragraphs 58 and 59 of the applications, that it was not difficult to identify mail services which were similar, from the users’ perspective, to the universal services and that, due to their intended use, their pricing and the conditions under which they were provided, mail services were substitutable for universal services. In addition, as set out in paragraph 91 et seq. above, the Court has been able to rule on that claim. The applicants are therefore wrong to claim that the statement of reasons is insufficient in that regard.

190 In the light of all of the foregoing, the seventh plea in law must therefore be rejected and, consequently, the actions must be dismissed in their entirety.

Costs

191 Under Article 134 of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings.

192 Since the applicants have been unsuccessful, they must be ordered to pay the costs incurred by the Commission, in accordance with the form of order sought by the Commission.

193 The Republic of Poland is to bear its own costs, pursuant to Article 138(1) of the Rules of Procedure.

On those grounds,

THE GENERAL COURT (Third Chamber, Extended Composition)

hereby:

1. **Dismisses the actions;**

2. **Orders Inpost Paczkomaty sp. z o.o. and Inpost S.A. each to bear their own costs and to pay those incurred by the European Commission;**

3. **Orders the Republic of Poland to bear its own costs.**

Frimodt Nielsen Kreuschitz Forrester

Półtorak Perillo

Delivered in open court in Luxembourg on 19 March 2019.

[Signatures]

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