



## Reports of Cases

### JUDGMENT OF THE COURT (Fourth Chamber)

27 March 2019\*

(Reference for a preliminary ruling – Internal market for postal services – Directives 97/67/EC and 2008/6/EC – Article 7(1) – Definition of ‘exclusive or special rights for the establishment and provision of postal services’ – Article 8 – Right of the Member States to organise the registered mail service used in the course of judicial procedures – Time limit for lodging a procedural document before a court – Interpretation of national law in conformity with EU law – Limits – Direct effect relied on by an emanation of a Member State in proceedings between that emanation and an individual)

In Case C-545/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sąd Najwyższy (Supreme Court, Poland), made by decision of 19 July 2017, received at the Court on 18 September 2017, in the proceedings

**Mariusz Pawlak**

v

**Prezes Kasy Rolniczego Ubezpieczenia Społecznego,**

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Seventh Chamber, acting as President of the Fourth Chamber, K. Jürimäe, C. Lycourgos, E. Juhász and C. Vajda (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: K. Malacek, Administrator,

having regard to the written procedure and further to the hearing on 18 September 2018,

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna, S. Żyrek and K. Rudzińska, acting as Agents,
- the European Commission, by P. Costa de Oliveira, L. Nicolae and S. L. Kaléda, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 November 2018,

gives the following

\* Language of the case: Polish.

## Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the first sentence of Article 7(1) of 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 (OJ 2008 L 52, p. 3, and corrigendum OJ 2015 L 225, p. 49) ('the amended directive'), read in conjunction with Article 8 of the amended directive and Article 4(3) TEU.
- 2 The request has been made in proceedings between Mr Mariusz Pawlak and the Prezes Kasy Rolniczego Ubezpieczenia Społecznego (Chairman of the Agricultural Social Insurance Fund, Poland) ('the chairman of the KRUS') regarding the compensation payable to Mr Pawlak following an agricultural workplace accident.

### Legal context

#### *European Union law*

##### *Directive 97/67*

- 3 Directive 97/67 initiated the process of gradual liberalisation of the postal services market. According to recital 2 of Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67 with regard to the further opening to competition of Community postal services (OJ 2002 L 176, p. 21), Directive 97/67 'established a regulatory framework for the postal sector at Community level, including measures to guarantee a universal service and the setting of maximum limits for the postal services which Member States may reserve to their universal service provider(s) with a view to the maintenance of the universal service, and a timetable for decision-making on the further opening of the market to competition, for the purposes of creating an internal market in postal services'.
- 4 Recitals 16 and 20 of Directive 97/67 state:
  - '(16) ... the maintenance of a range of those services that may be reserved, in compliance with the rules of the [EC] Treaty and without prejudice to the application of the rules on competition, appears justified on the grounds of ensuring the operation of the universal service under financially balanced conditions ...
  - ...
  - (20) ... for reasons of public order and public security, Member States may have a legitimate interest in conferring on one or more entities designated by them the right to site on the public highway letter-boxes intended for the reception of postal items; ... for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps identifying the country of origin and those responsible for providing the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation ...'.

5 Under Article 3(4) and (5) of Directive 97/67, in Chapter 2, entitled ‘Universal service’:

‘4. Each Member State shall adopt the measures necessary to ensure that the universal service includes the following minimum facilities:

- the clearance, sorting, transport and distribution of postal items up to two kilograms,
- the clearance, sorting, transport and distribution of postal packages up to 10 kilograms,
- services for registered items and insured items.

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

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

6 Chapter 3 of Directive 97/67, which was entitled ‘Harmonisation of the services which may be reserved’, comprises Articles 7 and 8 of that directive.

7 Article 7(1) and (2) of that directive was worded as follows:

‘1. To the extent necessary to ensure the maintenance of universal service, the services which may be reserved by each Member State for the universal service provider(s) shall be the clearance, sorting, transport and delivery of items of domestic correspondence, whether by accelerated delivery or not, the price of which is less than five times the public tariff for an item of correspondence in the first weight step of the fastest standard category where such category exists, provided that they weigh less than 350 grams. In the case of the free postal service for blind and partially sighted persons, exceptions to the weight and price restrictions may be permitted.

2. To the extent necessary to ensure the maintenance of universal service, cross-border mail and direct mail may continue to be reserved within the price and weight limits laid down in paragraph 1.’

8 Article 8 of that directive provides:

‘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.’

#### *Directive 2002/39*

9 Directive 2002/39 extensively amended Directive 97/67. It was directed at the further liberalisation of the market for postal services market and established, in recitals 14 and 24, a timetable for the gradual and controlled opening of the mail market to competition, giving 2009 as the anticipated date for the full accomplishment of the internal market for postal services.

10 Article 7(1) and (2) of Directive 97/67, as amended by Directive 2002/39, was worded as follows:

‘1. To the extent necessary to ensure the maintenance of universal service, Member States may continue to reserve services to universal service provider(s). Those services shall be limited to the clearance, sorting, transport and delivery of items of domestic correspondence and incoming

cross-border correspondence, whether by accelerated delivery or not, within both of the following weight and price limits. The weight limit shall be 100 grams from 1 January 2003 and 50 grams from 1 January 2006. These weight limits shall not apply as from 1 January 2003 if the price is equal to, or more than, three times the public tariff for an item of correspondence in the first weight step of the fastest category, and, as from 1 January 2006, if the price is equal to, or more than, two and a half times this tariff.

In the case of the free postal service for blind and partially sighted persons, exceptions to the weight and price restrictions may be permitted.

To the extent necessary to ensure the provision of universal service, direct mail may continue to be reserved within the same weight and price limits.

To the extent necessary to ensure the provision of universal service, for example when certain sectors of postal activity have already been liberalised or because of the specific characteristics particular to the postal services in a Member State, outgoing cross-border mail may continue to be reserved within the same weight and price limits.

2. Document exchange may not be reserved.'

*Directive 2008/6*

11 Directive 2008/6, again, extensively amended Directive 97/67 and accomplished the process of the liberalisation of the internal market for postal services.

12 Recitals 13, 16, 25, 26, 56 and 59 of Directive 2008/6 state:

'(13) The prospective study shows that the reserved area should no longer be the preferred solution for the financing of the universal service. This assessment takes into account the interest of the Community and its Member States in the accomplishment of the internal market and its potential for delivering growth and employment, as well as ensuring the availability of an efficient service of general economic interest for all users. It is therefore appropriate to confirm the final date for the accomplishment of the internal market for postal services.

...

(16) Complete market-opening will help to expand the overall size of the postal markets. It will further contribute to maintaining sustainable and quality employment within universal service providers as well as facilitate the creation of new jobs in other operators, new entrants and associated economic sectors. ...

...

(25) In the light of the studies carried out and with a view to unlocking the full potential of the internal market for postal services, it is appropriate to end the use of the reserved area and special rights as a means of ensuring that the universal service is financed.

(26) The external financing of the residual net costs of the universal service may still be necessary for some Member States. It is therefore appropriate to explicitly clarify the alternatives available in order to ensure the financing of the universal service, to the extent that this is needed and is adequately justified, while leaving Member States the choice of the financing mechanisms to be used. ... Member States may use other means of financing permitted by Community law, such as deciding, where and if necessary, that the profits accruing from other activities of the universal

service provider(s) outside the scope of the universal service are to be assigned, in whole or in part, to the financing of the net costs of the universal service, as long as this is in line with the [EC] Treaty. ...

...

- (56) Since the objectives of this Directive, namely achieving an internal market of Community postal services, ensuring a common level of universal services for all users and setting harmonised principles for the regulation of postal services, cannot be sufficiently achieved by Member States and can therefore, by reason of the scale and effects, be better achieved at Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the [EC] Treaty. ...

...

- (59) This Directive is without prejudice to the application of the [EC] Treaty rules on competition and on the freedom to provide services. In so far as mechanisms for the financing of the universal service involve aid granted by a Member State or through state aid resources in any form whatsoever within the meaning of Article 87(1) of the [EC] Treaty, this Directive is without prejudice to Member States' obligation to respect the [EC] Treaty rules on State aid.'

<sup>13</sup> According to Article 1 of the amended directive:

'This directive establishes common rules concerning:

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

<sup>14</sup> Article 2(1) and (6) of the amended directive reads as follows:

'For the purposes of this Directive, the following definitions shall apply:

- 1) "postal services": services involving the clearance, sorting, transport and delivery of postal items;

...

- 6) "postal item": an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value'.

15 Chapter 3 of the amended directive is entitled ‘Financing of universal services’.

16 Article 7 of the amended directive provides:

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

2. 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 [(OJ 2004 L 134, p. 114)], competitive dialogue or negotiated procedures with or without publication of a contract notice.

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

- a) a mechanism to compensate the undertaking(s) concerned from public funds; or
- b) a mechanism for the sharing of the net cost of the universal service obligations between providers of services and/or users.

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

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

### ***Polish law***

17 Under Article 165(2) of the ustawa – Kodeks postępowania cywilnego (Code of Civil Procedure) of 17 November 1964 (Dz. U. No 43, position 296), in its version applicable to the main proceedings (‘the KPC’):

‘Posting a procedural document at a Polish postal office of a designated operator within the meaning of the [ustawa – Prawo pocztowe [(Postal Law)] of 23 November 2012 (Dz. U. 2012, position 1529)] or at the post office of an operator providing a universal postal service in another Member State of the European Union shall be equivalent to lodging that procedural document before the court.’

18 It is apparent from the order for reference that, according to Article 3(13) of the Postal Law, ‘the designated operator’ is the postal operator ‘required’ to provide the universal postal service. The other operators are ‘entitled’ to carry out postal activities in their selected field but are not required to do so.

- 19 By decision of the Prezes Urzędu Komunikacji Elektronicznej (Chairman of the Office for Electronic Communications, Poland) of 30 June 2015, Poczta Polska S.A acquired, for a period of 10 years, under the Postal Law, the status of designated operator for the provision of the universal postal service.

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 20 Mr Pawlak, an agricultural worker, suffered an accident at work, following which he claimed compensation from the Kasa Rolniczego Ubezpieczenia Społecznego (Agricultural Social Insurance Fund, Poland) ('KRUS'). Mr Pawlak was dissatisfied with the decision of the chairman of the KRUS in response to his claim and brought an action against that decision before the Sąd Rejonowy Poznań-Grunwald (District Court, Poznań-Grunwald, Poland) which upheld that action.
- 21 The chairman of the KRUS brought an appeal against that court's judgment before the Sąd Okręgowy w Poznaniu (Regional Court, Poznań, Poland) which dismissed the appeal as inadmissible on the ground that it was received by that court on 22 June 2016, whereas the time limit for bringing that appeal expired on 20 June 2016.
- 22 The Sąd Okręgowy w Poznaniu (Regional Court, Poznań) held that it was irrelevant that the item, which had been posted at an operator other than the designated operator, was postmarked 20 June 2016, which was the last day of the period allowed for bringing an appeal, given that Article 165(2) of the KPC provides that only if a procedural document is sent via the designated operator, including if it is sent by ordinary post, will it be equivalent to lodging that procedural document before the relevant court.
- 23 The chairman of the KRUS brought an appeal before the Sąd Najwyższy (Supreme Court, Poland) against the judgment given by the Sąd Okręgowy w Poznaniu (Regional Court, Poznań). He submits that the latter court infringed Article 165(2) of the KPC and argues that the appeal brought before that court was posted within the prescribed time limit at the post office of a postal operator.
- 24 The Sąd Najwyższy (Supreme Court) notes that its case-law relating to Article 165(2) of the KPC is not unambiguous and that that provision raises doubts as to whether it is compatible with EU law.
- 25 In that regard, the referring court indicates that there is a discrepancy between two opposing lines of case-law regarding the legal effects of submitting a procedural document at a Polish post office of a postal operator other than the designated operator. According to the majority view, a procedural document submitted under those circumstances is regarded as submitted out of time if it is received by the relevant court once the statutory time limit for submitting the procedural document has expired. According to the minority view, if a procedural document is posted within the statutory time limit at a Polish post office, that is equivalent to lodging that procedural document before the relevant court, whether it is an office of the designated operator or any other postal operator.
- 26 The referring court takes the view that the former line of case-law does not take account of the context of EU law in the interpretation of Article 165(2) of the KPC, suggesting by implication that the content of that provision does not fall within the scope of Directive 97/67. According to that court, the second line of case-law is, by contrast, based on an interpretation of that provision in conformity with EU law. The referring court notes, however, that its decisions which have followed that second line of case-law do not address the scope of the first sentence of Article 7(1) of the amended directive or how to bring the application of Article 165(2) of the KPC in line with EU law.

27 In those circumstances, the Sąd Najwyższy (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Must the first sentence of Article 7(1) [of the amended directive], read in conjunction with Article 8 of the [amended] directive, be interpreted as meaning that rules of national procedural law, such as those laid down in Article 165(2) [of the KPC] under which only the posting of a procedural document at a post office of the designated operator, that is to say, the operator required to provide a universal postal service, is equivalent to lodging that document before the court, and the possibility of according such effect to the posting of a procedural document at the post office of another postal operator which provides a universal service, but which is not a designated operator, is excluded, constitute a special right?
- (2) If the answer to the first question is in the affirmative, must the first sentence of Article 7(1) of the [amended] directive, read in conjunction with Article 4(3) TEU, be interpreted as meaning that the benefits arising from the conferral of a special right on the designated operator in breach of the first sentence of Article 7(1) of the [amended] directive must also be extended to other postal operators, with the result that the posting of a procedural document at a national post office of an operator which provides a universal service but is not the designated operator must also be regarded as equivalent to lodging that document before the court, on the basis of rules corresponding to those arising from [judgment 21 June 2007, *Jonkman and Others*, C-231/06 to C-233/06, EU:C:2007:373]?
- (3) If the answer to the second question is in the affirmative, must the first sentence of Article 7(1) of the [amended] directive, read in conjunction with Article 4(3) TEU, be interpreted as meaning that a party to proceedings which is an emanation of a Member State may rely on the fact that a provision of national law, such as Article 165(2) [of the] KPC, is contrary to the first sentence of Article 7(1) of the [amended] directive?

## Consideration of the questions referred

### *Preliminary observations*

- 28 The Polish Government submits that a rule such as Article 165(2) of the KPC does not fall within the scope of the amended directive, but falls within the scope of rules of procedural law, which that directive does not seek to harmonise. In that regard, it notes that Directive 97/67 was adopted on the basis of Article 95 EC, which constitutes the legal basis for the harmonisation of national legislation intended to ensure the functioning of the internal market, whereas the legal basis for harmonising the rules of civil procedure was Article 65 EC (now Article 81 TFEU).
- 29 Furthermore, that government states that Article 1 of the amended directive, relating to its scope, lists the areas for which the amended directive establishes common rules, amongst which civil procedure does not feature.
- 30 It should be stated, in that regard, that Directive 2008/6, like Directive 97/67, which it amended, was adopted on the basis of articles of the EC Treaty which are now, after amendments, Articles 53, 62 and 114 TFEU, which are intended to confer on the EU legislature specific power to adopt measures to improve the functioning of the internal market (judgment of 5 October 2000, *Germany v Parliament and Council*, C-376/98, EU:C:2000:544, paragraph 87).
- 31 By the last amendment of Directive 97/67 by Directive 2008/6, the Community legislature intended, according to recitals 13 and 16 of the latter directive, to accomplish the liberalisation of the market for postal services and confirm the final date for the accomplishment of the internal market for postal



services, by removing not only the remaining obstacles to full market opening for certain universal service providers but also all other obstacles to the provision of postal services (see, to that effect, judgment of 16 November 2016, *DHL Express (Austria)*, C-2/15, EU:C:2016:880, paragraph 26). The Community legislature sought, at the same time, to ensure a common level of universal service for all users and to set harmonised principles for the regulation of the postal sector, in accordance with recital 56 of Directive 2008/6.

- 32 It cannot be inferred from the fact that Article 1 of the amended directive does not refer to civil procedure that that directive cannot have any effect on other areas of national law. A different interpretation, such as that proposed by the Polish Government, would jeopardise the attainment of the objective which the amended directive pursues, namely the accomplishment of the internal market for postal services. It would enable the Member States to maintain measures which, by their effects, could constitute obstacles to competition in that market.
- 33 Furthermore, Article 8 of the amended directive refers to the registered mail service used in the course of judicial procedures.
- 34 Consequently, the Polish Government's argument that a rule of national civil procedure, such as that laid down in Article 165(2) of the KPC, falls outside the scope of the amended directive, due to its purpose and regardless of the effects of such a rule on the areas harmonised by that directive, must be rejected.

### *The first question*

- 35 By its first question, the referring court asks, in essence, whether the first sentence of Article 7(1) of the amended directive, read in conjunction with Article 8 thereof, must be interpreted as precluding a rule of national law, such as that at issue in the main proceedings, which recognises only the posting of a procedural document at a post office of the operator designated to provide the universal postal service as being equivalent to lodging such a document before the relevant court.
- 36 In order to answer that question, it is necessary to interpret those provisions in turn.

### *The interpretation of the first sentence of Article 7(1) of the amended directive*

- 37 It should be recalled that the first sentence of Article 7(1) of the amended directive prohibits the Member States from granting or maintaining in force exclusive or special rights for the establishment and provision of postal services.
- 38 It is apparent from the very wording of that provision, which defines the scope of the prohibition contained therein by referring to the 'establishment and provision of postal services', that the granting or maintaining of an exclusive or special right are prohibited in so far as such a right concerns postal services.
- 39 'Postal services' are defined in Article 2(1) of the amended directive as services involving the clearance, sorting, transport and delivery of postal items. 'Postal item' is, for its part, defined in Article 2(6) of the amended directive as an item addressed in the final form in which it is to be carried by the postal service provider and includes, in addition to items of correspondence, for example, books, catalogues, newspapers, periodicals and postal packages containing merchandise with or without commercial value.

- 40 A procedural document sent by post to a court clearly constitutes a postal item within the meaning of Article 2(6) of the amended directive and, therefore, the related service falls within the definition of ‘postal services’ within the meaning of Article 2(1) of that directive. That finding is confirmed by the express reference made to that service in Article 8 of that directive and in recital 20 of Directive 97/67, which refer to the registered mail service used in the course of judicial procedures. It follows that the granting of an exclusive or special right covering the service of sending procedural documents to the courts by mail is caught by the prohibition set out in Article 7(1) of the amended directive.
- 41 As regards the terms ‘exclusive or special rights’ used in Article 7(1), it should be noted that neither that provision nor any other provision of the amended directive contain a definition of those terms.
- 42 However, those terms correspond to the identical terms used in Article 106(1) TFEU, which provides that ‘in the case of public undertakings and undertakings to which Member States grant special or exclusive rights, Member States shall neither enact nor maintain in force any measure contrary to the rules contained in the Treaties, in particular to those rules provided for in Article 18 and Articles 101 to 109’.
- 43 According to the Court’s case-law, a State measure may be regarded as granting a special or exclusive right within the meaning of Article 106(1) TFEU where it confers protection on a limited number of undertakings and which may substantially affect the ability of other undertakings to exercise the economic activity in question in the same geographical area under substantially equivalent conditions (judgment of 12 December 2013, *SOA Nazionale Costruttori*, C-327/12, EU:C:2013:827, paragraph 41 and the case-law cited).
- 44 It should be recalled that Article 106(1) TFEU, which has no independent effect, precludes Member States, by the reference which it makes to other articles of the TFEU, in the case of, in particular, undertakings to which they grant special or exclusive rights, from either enacting or maintaining in force national legislation contrary to, in particular, Articles 49 and 59 TFEU and to competition rules laid down in the TFEU (see, to that effect, judgments of 13 December 2007, *United Pan-Europe Communications Belgium and Others*, C-250/06, EU:C:2007:783, paragraphs 14, 15 and 17 and the case-law cited, and of 17 July 2008, *ASM Brescia*, C-347/06, EU:C:2008:416, paragraph 61).
- 45 Therefore, the purpose of Article 106(1) TFEU and the objectives pursued by Directive 2008/6, referred to in paragraph 31 of the present judgment, and, more specifically, those consisting of imposing upon the postal sector, which is subject to public service obligations, competition rules laid down by the TFEU, and of removing obstacles to the accomplishment of the internal market for postal services, converge to a great extent. Consequently, the definition of ‘exclusive or special right’ within the meaning of the Court’s case-law cited in paragraph 43 of the present judgment may be transposed to the specific context of Directive 97/67.
- 46 It is true that Article 106(1) TFEU does not prohibit, in itself, the granting or maintaining of an exclusive or special right to an undertaking, but requires that the granting or maintaining of such a right should comply with the other substantive provisions of the TFEU, whereas the first sentence of Article 7(1) of the amended directive prohibits the granting or maintaining of an exclusive or special right to an undertaking for the establishment and provision of postal services.
- 47 However, such a difference in the consequences that follow from a finding that there is an exclusive or special right under those two provisions does not preclude the transposition, in the context of the amended directive, of the definition of ‘exclusive or special right’ within the meaning of the Court’s case-law cited in paragraph 43 of the present judgment. As the European Commission correctly stated at the hearing, that difference only leads, where an exclusive or special right is granted by a Member State to an undertaking, to compliance with Article 7(1) of the amended directive being examined

independently of that relating to compliance with Article 106(1) TFEU. That conclusion also follows from recital 59 of Directive 2008/6, which states that that directive is without prejudice to the application of the Treaty rules on competition and the freedom to provide services.

- 48 As regards the scope of the prohibition on the granting or maintaining in force of exclusive or special rights set out in the first sentence of Article 7(1) of the amended directive, it follows from the wording of that provision that that prohibition is, in principle, general.
- 49 That is confirmed by the purpose and origin of Article 7 of the amended directive. Thus, under the second sentence of paragraph 1 of that article, Member States may finance the provision of universal services by one of the means provided for in paragraphs 2 to 4 of that article, or by any other means compatible with the Treaty.
- 50 It follows, in that regard, from recitals 25 and 26 of Directive 2008/6 that, by Article 7 of the amended directive, the EU legislature intended to end the use of the reserved area and special rights as a means of ensuring that the universal service is financed, while permitting Member States to use other means of external financing for the universal service less detrimental to competition.
- 51 As is apparent from Article 7 of Directive 97/67, as amended by Directive 2002/39, and from recital 16 of Directive 97/67, in so far as it was necessary to ensure the maintenance of the universal service under financially balanced conditions, Member States had the option to reserve various services, the scope of which was defined in Article 7, to one or more universal service providers. However, no such option was provided for in Directive 2002/39 with regard to unreserved services under Article 7, whether or not those services are part of the universal service.
- 52 It is apparent from the Court's case-law that Member States did not have the option of extending, if they wished to, services reserved for universal postal service providers pursuant to Article 7 of Directive 97/67, as amended by Directive 2002/39, as any such extension goes against the purpose of Directive 97/67 thus amended, which was to establish gradual and controlled liberalisation in the postal sector (see, to that effect, judgment of 18 December 2007, *Asociación Profesional de Empresas de Reparto y Manipulado de Correspondencia*, C-220/06, EU:C:2007:815, paragraph 67 and the case-law cited).
- 53 By Directive 2008/6, the Community legislature introduced the current text of Article 7(1) of the amended directive, without going back on the liberalisation achieved up until then in the unreserved sector. Consequently, following that amendment of Article 7(1), a Member State's reserving a postal service, whether or not it is part of the universal service, to one or more providers responsible for the universal service, constitutes a prohibited means of ensuring the financing of the universal service.
- 54 Therefore, subject to the derogation provided for in Article 8 of the amended directive, the granting or maintaining in force of exclusive or special rights for the establishment and provision of postal services within the meaning of the first sentence of Article 7(1) of the amended directive is prohibited.
- 55 In that regard, contrary to the argument put forward by the Polish Government at the hearing, it is not necessary to draw a distinction, for the purposes of applying that prohibition, on the basis of whether or not an exclusive or special right for the establishment and provision of postal services is granted to a universal service provider in compliance with the principles of objectivity, proportionality, non-discrimination and transparency.
- 56 Not only is such an interpretation not based on anything in the text of Directive 2008/6 but also, if it were to be followed, it would lead to the scope of the prohibition set out in the first sentence of Article 7(1) of the amended directive being limited and would, therefore, jeopardise the attainment of the objective pursued by that directive, namely the accomplishment of the internal market for postal services.

- 57 In the present case, it is apparent from the request for a preliminary ruling that, according to Article 165(2) of the KPC, the posting of a procedural document at a Polish post office of the designated operator, within the meaning of the Postal Law, or at a post office of a universal service provider in another Member State is equivalent to lodging that document before the relevant court.
- 58 In view of the findings in paragraph 40 of the present judgment, since such a rule of national law concerns the service of sending procedural documents to the courts by mail, it must be regarded as covering the provision of postal services within the meaning of the first sentence of Article 7(1) of the amended directive, read in conjunction with Article 2(1) and (6) of that directive.
- 59 As regards the question of whether, by a rule of national law such as that at issue in the main proceedings, the Member State concerned grants ‘exclusive or special rights’ for the establishment of postal services, it is common ground, first, that that provision, which is described as a ‘law’ in the order for reference, is a law in accordance with the Court’s case-law relating to Article 106(1) TFEU (see, to that effect, judgment of 13 December 1991, *GB-Inno-BM*, C-18/88, EU:C:1991:474, paragraph 20).
- 60 Second, as regards whether such a law confers protection on a limited number of undertakings within the meaning of the case-law established in the judgment of 12 December 2013, *SOA Nazionale Costruttori* (C-327/12, EU:C:2013:827, paragraph 41), the referring court states that only the operator designated, within the meaning of the Postal Law, to provide the universal service may benefit from the rule in Article 165(2) of the KPC, which confers a favourable legal effect on the sending, through that operator or that provider, of a procedural document to a court.
- 61 As is apparent from the request for a preliminary ruling, in accordance with Article 165(2) of the KPC, statutory time limits for the lodging of procedural documents before the courts are deemed to have been complied with when, within those statutory time limits, a procedural document has been posted at a post office of a designated operator or of a provider as referred to in that provision. On the other hand, when such a document is sent via another postal service provider, that document must have been delivered by the provider to the court before the expiry of the statutory time limit if it is to be regarded as being lodged within that time limit.
- 62 Therefore, a rule of national law, such as Article 165(2) of the KPC, appears to confer an advantage on a limited number of undertakings because it reserves to the designated operator or to another universal service provider in another Member State the service of delivering procedural documents to the courts as well as a benefit in the sense that the procedural document posted at that operator or that other provider is deemed to be a document lodged before the court.
- 63 Third, as regards whether such a rule may substantially affect the ability of other undertakings to exercise the economic activity in question in the same geographical area under substantially equivalent conditions, within the meaning of the case-law resulting from the judgment of 12 December 2013, *SOA Nazionale Costruttori* (C-327/12, EU:C:2013:827, paragraph 41), in the light of the information set out in the request for a preliminary ruling, that is so in the present case.
- 64 A postal service provider other than those referred to in Article 165(2) of the KPC may not provide the service of delivering procedural documents to the courts, while benefiting from the advantage of those procedural documents being deemed to have been lodged before the relevant courts, which is the case for procedural documents posted at a designated operator or another provider referred to in that provision, which has the effect of removing that service from free competition in the internal market for postal services.
- 65 Consequently, subject to verification by the referring court, a rule of national law such as that at issue in the main proceedings grants an exclusive or special right for the establishment and provision of postal services within the meaning of the first sentence of Article 7(1) of the amended directive.

*Interpretation of Article 8 of the amended directive*

- 66 According to Article 8 of the amended directive, the provisions of Article 7 of that directive are 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.
- 67 In the light of its wording and its context, Article 8 of the amended directive is to be strictly interpreted, in so far as it contains a derogation from the general rule in Article 7 of that directive, which provides, from that point onwards, for the removal of exclusive and special rights with the aim of accomplishing the internal market for postal services, which is the main objective pursued by Directive 2008/6.
- 68 It follows, given that the wording of Article 8 of the amended directive refers to the organisation of the mail service used in the course of judicial procedures only with regard to 'registered mail', that the derogation provided for in that article cannot be interpreted broadly so as to apply it to the ordinary mail service used in the course of judicial procedures.
- 69 In the present case, Article 165(2) of the KPC does not draw any distinction, for the purposes of entitlement to the benefit which it confers, between sending a procedural document to a court by ordinary mail or by registered mail. In view of the findings set out in paragraphs 67 and 68 of the present judgment, that rule of national law in question can therefore fall within the scope of Article 8 of the amended directive only in so far as it concerns the service of delivering procedural documents by registered mail to the courts.
- 70 As regards the scope of the derogation set out in Article 8 of the amended directive, the referring court and the Commission take the view that, as that article is to be strictly interpreted, it does not authorise the Member States to reserve that service to a single operator, or authorise them to introduce a benefit such as that conferred by the national rule at issue in the main proceedings, but merely enables the Member States to impose the requirement for the parties to a dispute to send procedural documents to a court by registered mail.
- 71 In that regard, it should be noted that, according to the information in the request for a preliminary ruling, information which is not contradicted by the other information in the file, Article 165(2) of the KPC provides a benefit for an operator in a competitive market, which other operators do not have, since posting procedural documents via that operator is equivalent to lodging them before a court, with the effect that a procedural time limit may be complied with even when such a document reaches that court after the expiry of the time limit. It follows that the essential question in the present case is whether a Member State may rely on Article 8 of the amended directive in order to introduce or maintain a benefit such as that conferred by the national rule at issue in the main proceedings.
- 72 The purpose of Article 8 of the amended directive is stated in recital 20 of directive 97/67, namely that 'for reasons of public order and public security, Member States may have a legitimate interest in conferring on one or more entities designated by them the right to site on the public highway letter-boxes; ... for the same reasons, they are entitled to appoint the entity or entities responsible for issuing postage stamps ... and those responsible for providing the registered mail service used in the course of judicial or administrative procedures in accordance with their national legislation'. It follows that Article 8 of the amended directive, which remained unchanged in spite of the successive amendments to Directive 97/67, must be interpreted as permitting Member States, with regard to the registered mail service used in the course of judicial procedures, to derogate from the rule laid down in Article 7 of the amended directive for reasons of public order and public security and if they have a legitimate interest.

- 73 Accordingly, Article 8 of the amended directive, read in the light of recital 20 of directive 97/67, must be interpreted as meaning that a Member State, in order to use the derogation provided for in that article, must prove that there is a public interest.
- 74 Such an interpretation is confirmed by the objectives pursued by the legislative context in which Article 8 of the amended directive applies. As is apparent from recitals 25 and 56 of directive 2008/6, its purpose is to achieve the internal market for postal services and to end the use of the reserved area and special rights as a means of ensuring that the universal service is financed. To permit a Member State to grant an exclusive or special right in a liberalised market, without any objective justification, would be contrary to such objectives.
- 75 As regards Article 165(2) of the KPC, the Commission submitted that neither the order for reference nor the Polish Government's written submissions indicate any objective justification for granting the benefit.
- 76 In that regard, at the hearing before the Court, the Polish Government stated that, in Poland, the territorial coverage of the registered mail service offered by various operators is very disparate and therefore there is an interest in all mailings of procedural documents to the courts enjoying the same level of guarantee as regards the security of the mailings and the periods within which those mailings will be delivered to the courts. That is why the operator responsible for the universal service, which operates throughout the national territory, was granted the benefit at issue.
- 77 In the present case, it should be noted that, according to the information placed before the Court, under Polish legislation, other operators are also permitted to deliver procedural documents intended for the courts and are, therefore, regarded as having the appropriate organisational and staffing resources to enable them to do so. Furthermore, the explanations provided by that government do not explain how a difference as regards procedural time limits, depending on the operator, could foster legal certainty and the proper administration of justice to which those time limits contribute. In a case such as that at issue in the main proceedings, in which the admissibility of the action depends on the operator chosen, considerations relating to legal certainty and proper administration of justice would indeed appear to rule out such a difference regarding procedural time limits. In such circumstances, it does not appear that, by permitting different time limits depending on the operator chosen from operators competing in the same market, the legislation at issue in the main proceedings genuinely meets the concern of achieving a public order objective, which it is for the referring court to verify.
- 78 In the light of the above, it is apparent that Article 8 of the amended directive cannot be interpreted as authorising the use of a rule of national law such as that at issue in the main proceedings.
- 79 In the light of the foregoing, the answer to the first question is that the first sentence of Article 7(1) of the amended directive, read in conjunction with Article 8 of that directive, must be interpreted as precluding a rule of national law which recognises only the posting of a procedural document at a post office of the sole operator designated to provide the universal postal service as being equivalent to lodging such a document before the relevant court, in the absence of any objective justification relating to reasons of public order or public security.

### *The second and third questions*

- 80 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether the first sentence of Article 7(1) of the amended directive, read in conjunction with Article 4(3) TEU, must be interpreted as meaning that should the benefit enjoyed by the designated operator under a rule of national law such as that at issue in the main proceedings in order to provide the universal service have been granted in breach of the first sentence of Article 7(1), that

benefit must be extended to other postal operators, in order to avoid any discrimination. The referring court also seeks to ascertain whether an emanation of a Member State may rely on the direct effect of the latter provision in proceedings between it and an individual.

- 81 Thus, the referring court is seeking to ascertain primarily what conclusions are to be drawn, in the dispute in the main proceedings, if Article 165(2) of the KPC is incompatible with the amended directive.
- 82 It must be noted, in the first place, that, according to the referring court, the interpretation that Article 165(2) of the KPC complies with the first sentence of Article 7(1) of the amended directive is an interpretation *contra legem*. Furthermore, that interpretation would require that the effects of a literal interpretation of a provision of national law should be disregarded, which is a debatable practice in respect of a procedural rule.
- 83 It should be recalled, in that regard, that it follows from the Court's case-law that, in applying national law, the national court called upon to interpret a directive is required to do so, as far as possible, in the light of the wording and purpose of the directive at issue in order to achieve the result pursued by the directive and thereby comply with the third paragraph of Article 288 TFEU. The requirement for national law to be interpreted in conformity with EU law is inherent in the system of the Treaty since it permits the national court, for the matters within its jurisdiction, to ensure the full effectiveness of EU law when it determines the dispute before it (judgment of 19 January 2010, *Küçükdeveci*, C-555/07, EU:C:2010:21, paragraph 48 and the case-law cited).
- 84 It should also be noted that it is for the national courts, taking into account the whole body of rules of national law and applying methods of interpretation recognised by that law, to decide whether and to what extent a national provision can be interpreted in conformity with the directive at issue, without having recourse to an interpretation *contra legem* of the national provision (see, to that effect, judgment of 22 January 2019, *Cresco Investigation*, C-193/17, EU:C:2019:43, paragraph 74 and the case-law cited).
- 85 Such an obligation to interpret national law in conformity with EU law is limited by the general principles of EU law, in particular legal certainty, and that cannot serve as the basis for an interpretation of national law *contra legem* (see, to that effect, judgments of 16 July 2009, *Mono Car Styling*, C-12/08, EU:C:2009:466, paragraph 61 and the case-law cited, and of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 32 and the case-law cited).
- 86 The referring court seeks guidance on the scope of those limits in the circumstances of the dispute in the main proceedings, in which the question arises regarding the consequences of a rule of national law not being in conformity with EU law as regards compliance by a party to the dispute in question with the statutory deadline for bringing an action before the relevant national court.
- 87 In its case-law, the Court has acknowledged the importance, in the EU legal order, of compliance with procedural time limits intended to provide legal certainty by ensuring that EU measures which produce legal effects are not called in question indefinitely and with the requirements of the sound administration of justice and procedural economy (judgment of 14 September 1999, *Commission v AssiDomän Kraft Products and Others*, C-310/97 P, EU:C:1999:407, paragraph 61). The same considerations underlie the requirement to comply with the procedural time limits laid down in the legal orders of the Member States.
- 88 It follows that both the fact that an interpretation of paragraph 165(2) of the KPC in conformity with the amended directive would lead to an interpretation *contra legem* of that provision, and the fact that such an interpretation could interfere with the application of rules of national law on time limits for bringing proceedings which seek to guarantee legal certainty, limit, in the present case, the requirement to interpret national law in conformity with EU law.

- 89 In the second place, as regards whether the amended directive may be relied on by an emanation of a Member State in order to disapply, in a dispute against an individual, a provision of that Member State which is contrary to the amended directive, it is apparent from the Court's case-law that allowing an emanation of a Member State to rely on the provisions of a directive against an individual when that Member State has not correctly transposed that directive into national law would amount to allowing that Member State to take advantage of its own failure to comply with EU law (see, to that effect, judgments of 26 September 1996, *Arcaro*, C-168/95, EU:C:1996:363, paragraph 36 and the case-law cited, and of 12 December 2013, *Portgás*, C-425/12, EU:C:2013:829, paragraphs 24 and 25).
- 90 In the present case, according to the information in the request for a preliminary ruling, the party relying against an individual on the incompatibility of Article 165(2) of the KPC with the provisions of the amended directive is the chairman of KRUS, namely a public authority classified as an 'emanation of the State'. In accordance with the case-law cited in the preceding paragraph, a public authority, such as the chairman of KRUS, cannot rely on the amended directive, as such, against an individual.
- 91 Consequently, having regard to the circumstances of the dispute in the main proceedings, it is not necessary to examine whether the benefit enjoyed by the operator designated to provide the universal service under Article 165(2) of the KPC must be extended to other postal operators, even if that benefit has been granted in breach of the amended directive.
- 92 Having regard to the foregoing, the answer to the second and third questions is that a public authority regarded as an emanation of a Member State cannot rely on the amended directive, as such, against an individual.

### Costs

- 93 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. The first sentence of Article 7(1) of 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, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, read in conjunction with Article 8 of the amended directive, must be interpreted as precluding a rule of national law which recognises only the posting of a procedural document at a post office of the sole operator designated to provide the universal postal service as being equivalent to lodging such a document before the relevant court, in the absence of any objective justification relating to reasons of public order or public security.**
- 2. A public authority regarded as an emanation of a Member State cannot rely on Directive 97/67, as amended by Directive 2008/6, as such, against an individual.**

[Signatures]