



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

2 May 2019*

(Reference for a preliminary ruling — Directive 97/67/EC — Common rules for the development of the internal market in postal services — Provision of the universal postal service — Exclusive rights of the designated operator — Issue of means of payment for postage other than postage stamps)

In Case C-259/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Juzgado de lo Mercantil nº 3 de Madrid (Commercial Court No 3, Madrid, Spain), made by decision of 20 June 2017, received at the Court on 11 April 2018, in the proceedings

Sociedad Estatal Correos y Telégrafos SA

v

Asendia Spain SLU,

THE COURT (Eighth Chamber),

composed of F. Biltgen, President of the Chamber, J. Malenovský and L.S. Rossi (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Asendia Spain SLU, by I. Moreno-Tapia Rivas and E. de Félix Parrondo, abogadas, and by J. Botella Carretero, abogado,
- the Spanish Government, initially by V. Ester Casas and subsequently by M.J. García-Valdecasas Dorrego, acting as Agents,
- the French Government, by A.-L. Desjonquères, E. de Moustier and R. Coesme, acting as Agents,
- the European Commission, by L. Nicolae and J. Rius Riu, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Spanish.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation 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) ('Directive 97/67').
- 2 The request has been made in proceedings between Sociedad Estatal Correos y Telégrafos SA ('Correos') and Asendia Spain SLU concerning the marketing by the latter of means of payment for postage other than postage stamps.

Legal context

EU law

Directive 97/67

- 3 Recitals 8, 16 and 20 of Directive 97/67 state:

'(8) Whereas measures seeking to ensure the gradual and controlled liberalisation of the market and to secure a proper balance in the application thereof are necessary in order to guarantee, throughout the Community, and subject to the obligations and rights of the universal service providers, the free provision of services in the postal sector itself;

...

(16) Whereas the maintenance of a range of those services that may be reserved, in compliance with the rules of the 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) Whereas, 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; whereas, 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; ...'

- 4 Article 7(1) to (4) of that 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 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 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 2008/6

6 Recitals 2, 10, 11, 13 and 25 of Directive 2008/6 are worded as follows:

'(2) Directive 97/67/EC ... 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, to be reduced in a gradual and progressive manner, 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.

...

(10) In accordance with Directive 97/67/EC, a prospective study assessing, for each Member State, the impact on universal service of the full accomplishment of the internal market of Community postal services in 2009 has been carried out. The Commission has also undertaken a thorough review of the Community postal sector, including the commissioning of studies on the economic, social and technological developments in the sector, and has consulted extensively with interested parties.

(11) The prospective study states that the basic aim of ensuring the sustainable provision of a universal service matching the standard of quality defined by the Member States in accordance with Directive 97/67/EC can be secured throughout the Community by 2009 without the need for a reserved area.

...

(13) The prospective study shows that the reserved area should no longer be the preferred solution for the financing of the universal service. ...

...

(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.'

Spanish law

7 Article 33 of ley 43/2010 del servicio postal universal, de los derechos de los usuarios y del mercado postal (Law 43/2010 on the universal postal service, the rights of users and the postal market) of 30 December 2010 (BOE No 318 of 31 December 2010, p. 109195; 'Law 43/2010'), which transposes Directive 2008/6, is worded as follows:

'In order to ensure the provision of the universal postal service and the proper functioning thereof, the designated operator is guaranteed:

...

(e) the distribution of postage stamps or other means of payment for postage, which may be retailed via the postal network or through third parties.'

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

8 Correos is designated by Law 43/2010 as the operator responsible for the universal postal service in Spain.

9 Asendia Spain is an operator authorised to provide postal services in the Spanish market.

10 As Asendia Spain markets means of payment for postage other than postage stamps, Correos brought proceedings for unfair competition before the referring court, the Juzgado de lo Mercantil n° 3 de Madrid (Commercial Court No 3, Madrid, Spain).

11 In that context, Correos complains that Asendia Spain engages in three allegedly unfair types of practice which have caused Correos damage, namely, in the first place, the marketing of means of payment for postage or prepaid labels which imitate the stamps used by Correos and which are liable to be mistaken for those stamps, in the second place, the placing of those means of payment for postage on the market outside its domestic postal network and, in the third place, the failure to provide adequate information to the users of those means of payment for postage concerning the fact that correspondence bearing those means of payment for postage may be placed only in certain mailboxes.

12 According to the referring court, the question whether the conduct of Asendia Spain is unfair depends on the scope of the guarantees granted to Correos under Law 43/2010. In that regard, that court refers to case-law of the Tribunal Supremo (Supreme Court, Spain) according to which it cannot be ruled out that Article 33(e) of Law 43/2010 must be read as meaning that Correos should be granted an exclusive right in regard to the marketing of means of payment for postage other than postage stamps.

13 Since the Juzgado de lo Mercantil nº 3 de Madrid (Commercial Court No 3, Madrid) had doubts concerning the compatibility of that provision, as thus interpreted, with EU law, it decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

- (1) Is national legislation under which the guarantee given to the postal operator designated for the provision of a universal postal service entails it being the only entity authorised to distribute means of payment for postage other than postage stamps contrary to Article 7(1) and Article 8 of [Directive 97/67]?
- (2) If the answer to the previous question is in the affirmative, is it compatible with the EU postal rules that private postal operators are required to have bricks-and-mortar premises open to the public in order to be able to distribute and market means of payment for postage other than postage stamps?

Consideration of the questions referred

Admissibility of the questions

- 14 According to settled case-law of the Court, the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of EU law which they need in order to decide the disputes before them (judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83 and the case-law cited).
- 15 In that context, it is solely for the national court before which the dispute has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is in principle required to give a ruling (judgment of 27 June 2017, *Congregación de Escuelas Pías Provincia Betania*, C-74/16, EU:C:2017:496, paragraph 24 and the case-law cited).
- 16 It follows that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought is unrelated to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual and legal material necessary to give a useful answer to the questions submitted to it (judgment of 6 September 2016, *Petruhhin*, C-182/15, EU:C:2016:630, paragraph 20 and the case-law cited).
- 17 In that regard, the need to provide an interpretation of EU law which will be of use to the national court means that that court must define the factual and legislative context of the questions which it is asking or, at the very least, explain the factual circumstances on which those questions are based. The Court is empowered to rule on the interpretation or validity of EU provisions only on the basis of the facts which the national court puts before it (order of 21 June 2018, *Idroenergia*, C-166/18, not published, EU:C:2018:476, paragraph 12 and the case-law cited).
- 18 The referring court must also set out the precise reasons why it is unsure as to the interpretation of certain provisions of EU law and why it considers it necessary to refer questions to the Court for a preliminary ruling. It is also essential that the national court should provide at the very least some explanation of the reasons for the choice of the provisions of EU law which it seeks to have

interpreted and of the link which it establishes between those provisions and the national legislation applicable to the proceedings pending before it (order of 21 June 2018, *Idroenergia*, C-166/18, not published, EU:C:2018:476, paragraph 13 and the case-law cited).

- 19 Those requirements concerning the content of a request for a preliminary ruling are expressly set out in Article 94 of the Rules of Procedure of the Court of Justice, of which the national court should, in the context of the cooperation instituted by Article 267 TFEU, be aware and which it is bound to observe scrupulously (order of 21 June 2018, *Idroenergia*, C-166/18, not published, EU:C:2018:476, paragraph 14 and the case-law cited).
- 20 Furthermore, those requirements also appear in paragraph 15 of the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2018 C 257, p. 1). In addition, it follows from paragraph 16 of those recommendations that ‘the referring court or tribunal must provide precise references for the national provisions applicable to the facts of the dispute in the main proceedings’ (see, to that effect, order of 21 June 2018, *Idroenergia*, C-166/18, not published, EU:C:2018:476, paragraphs 16 and 17).
- 21 In its written observations, the Commission claims that the order for reference does not contain sufficient material regarding the factual context of the dispute in the main proceedings and the national legislation relevant to an understanding of the first question. As a result, that question must, it submits, be declared inadmissible.
- 22 It is clear from that order for reference, first, that the referring court is called upon to rule on the unfair nature of the business practice consisting, for Asendia Spain, in offering for sale means of payment for postage other than postage stamps, and second, that the unfair nature of that practice depends on whether or not the exclusive right granted under Article 33(e) of Law 43/2010 to Correos for the distribution of those means of payment for postage is compatible with Articles 7 and 8 of Directive 97/67.
- 23 The fact that the Commission takes the view that the referring court’s interpretation of Spanish law is incorrect, and therefore that Article 33(e) of Law 43/2010 does not grant any exclusive right to Correos, is not relevant, in view of the case-law referred to in paragraphs 16 and 17 of the present judgment.
- 24 It follows that the first question is admissible.
- 25 By contrast, that is not the case with regard to the second question.
- 26 As noted, in essence, by both the French Government and the Commission in their written observations, the referring court does not define in any way the factual and legislative context of that second question. In particular, it does not explain on what basis it considers that it must be inferred from the only national provision cited in its order for reference, namely Article 33(e) of Law 43/2010, that that provision requires private postal operators to have bricks-and-mortar premises open to the public in order to be able to distribute and market means of payment for postage other than postage stamps.
- 27 In addition, that order for reference does not identify, apart from a general reference to ‘EU postal rules’, the provisions of EU law which it seeks to have interpreted, which prevents the Court from understanding the link between EU law and the national legislation applicable in the main proceedings.
- 28 In those circumstances, the Court does not have before it the factual and legal material necessary to give a useful answer to the second question, which is, as a result, manifestly inadmissible.

The first question

- 29 By its first question, the referring court seeks to ascertain, in essence, whether Article 7(1) and Article 8 of Directive 97/67 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which guarantees to the postal operator designated for the provision of the universal postal service an exclusive right to distribute means of payment for postage other than postage stamps.
- 30 In order to answer that question, suffice it to note that it is apparent from the actual wording of that Article 7(1) that ‘Member States shall not grant or maintain in force exclusive or special rights for the establishment and provision of postal services’.
- 31 That provision accordingly precludes any national legislation, such as that at issue in the main proceedings, which grants exclusive rights to postal services providers, including, therefore, the exclusive right to market means of payment for postage other than postage stamps.
- 32 That view is also supported by the historical and teleological interpretation of Directive 97/67.
- 33 As is apparent from recital 16 of Directive 97/67, in its original version, the maintenance of reserved areas was the preferred solution for the financing of the universal postal service. However, it follows from recitals 10, 11, 13 and 25 of Directive 2008/6 that, with the adoption of that latter directive, the EU legislature ultimately took the view, in the light of the prospective studies carried out in order to assess the impact on universal service of the full accomplishment of the internal market for postal services, that the basic objective of ensuring the sustainable provision of a universal service could subsequently be secured without the need for a reserved area and, consequently, that it ‘[was] appropriate to end the use of the reserved area and special rights as a means of ensuring that the universal service is financed’.
- 34 Moreover, even where external financing of the residual net cost of the universal service remains necessary, Article 7(2) to (4) of Directive 97/67 does not mention, among the options expressly authorised to ensure the financing of the universal service, the granting of exclusive or special rights to the designated operator.
- 35 The foregoing considerations are not invalidated by Article 8 of Directive 97/67, according to which Article 7 of that directive does not interfere with the right of Member States to organise, in accordance with national law, inter alia, the issue of postage stamps.
- 36 The issue of means of payment for postage other than postage stamps, such as those distributed by Asendia Spain, manifestly does not come within the substantive scope of Article 8, which refers only to 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.
- 37 Such a conclusion is confirmed, moreover, by the fact that, first, as it introduces an exception to the general rule in Article 7(1) of Directive 97/67, a general rule which seeks to achieve the main objective of Directive 2008/6, namely, as is apparent from the title itself of that directive, the full accomplishment of the internal market in postal services, Article 8 must be interpreted strictly. Second, it follows from recital 20 of Directive 97/67 that it is only for reasons of public order and public security that Member States remain entitled to appoint, inter alia, the entity or entities responsible for issuing postage stamps identifying the country of origin, to the exclusion of any other reason related to the financing of the universal service.

- 38 It follows from all of the foregoing considerations that the answer to the first question is that Article 7(1) and Article 8 of Directive 97/67 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which guarantees to the postal operator designated for the provision of the universal postal service an exclusive right to distribute means of payment for postage other than postage stamps.

Costs

- 39 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 (Eighth Chamber) hereby rules:

Article 7(1) and Article 8 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, must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which guarantees to the postal operator designated for the provision of the universal postal service an exclusive right to distribute means of payment for postage other than postage stamps.

[Signatures]