

*“Legal aspects of universal service financing in the area of telecommunications and post”*

Telecommunications and postal universal service belong to the group of services which should be provided on the territory of the European Union by Member States. Universal service forms a part of a broader concept of services of general economic interest, understood as services which in the absence of public intervention, would not be provided at all or would be provided on terms and conditions worse than expected. The underlying principle is that a defined minimum set of services of high quality, provided at an affordable price, should be guaranteed for all citizens and entrepreneurs. Access to the above services is a significant component of the standard of living and determines the exercise of fundamental rights. Furthermore, it constitutes an important social value. It reflects enforcement of the principles of solidarity and equal treatment under free market economy conditions.

General rules on the provision of telecommunications and postal universal service are set out in the European Union directives. Directive 2002/21/WE defines telecommunications universal service as the minimum set of services, of specified quality which is available to all users regardless of their geographical location and, in the light of specific national conditions, at an affordable price. Under the postal Directive 97/67/WE, Member States must ensure that users enjoy the right to a universal service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users.

One of the key elements of universal service is affordability. It is inherent in the universal services, which are being rendered to the general economic interest, that the undertaking designated to provide them must bear certain additional costs. Due to the obligation to provide universal service at a reasonable price, the undertakings providing it may be forced to charge tariffs that do not cover the incurred costs. The legal requirements for the provision of universal service pose risk that prices laid down in tariffs would be lower than those resulting from normal market conditions. Such a situation constitutes a threat to the business of the universal service operator since under commercial conditions it can only survive when it can recover the costs of its activity. The suffered losses and incurred additional costs must be financed in order to compensate the undertaking in question. In cases where costs are not covered by the users of the universal service, it is necessary to introduce certain mechanisms for the transfer of funds.

The European legislator acknowledged the above problems and decided to introduce regulations in order to deal with them. Therefore, on the one hand the European legislator (in Annex IV to directive 2002/22/WE and Annex I to directive 97/67/WE) indicates that national regulatory authorities should consider all measures to ensure appropriate incentives for undertakings (designated or not) which provide universal service in a cost-effective manner, and on the other hand, it introduces targeted solutions allowing to finance any inefficiencies, either in part or in full. Member States, including Poland, were under duty to implement the abovementioned solutions laid down in the EU framework into their internal legal systems.

The legal concept of financing universal service is not entirely clear. EU rules governing this matter are considerably imprecise. The conditions for granting compensation for the provision of universal service were defined very generally. As a consequence, the interpretation of the relevant provisions of Directives 97/67/EC and 2002/22/EC may prove difficult. This has an impact on the process of enacting national legislation implementing the EU rules and affects the application of national laws which must be interpreted in conformity with EU law.

This dissertation discusses the EU and Polish law regime applicable to the financing of the universal service. The dissertation deals with four research problems, i.e.:

- 1) analysis of the impact of the general principle of economic freedom on the interpretation of universal service financing rules,
- 2) identification of reasons why the process of setting the amount of universal service compensation and its transfer is very lengthy, and an attempt to determine whether it is possible to shorten the duration of this procedure under the existing laws or whether it is necessary to change the applicable regulations to this end,
- 3) establishing whether the universal service compensation constitutes State aid and determining the possible impact of the State aid provisions on the application of rules for granting compensation,
- 4) assessment of the consistency of Polish regulations on financing universal service with the relevant EU laws.

This dissertation is based on the logical-linguistic methodology of analysis of EU and national law. The comparative method was also important for the results of the study, as the universal service is present in all EU Member States. The empirical method was also used, so as to base conclusions on experience in applying universal service financing rules. Specific solutions adopted in the postal and telecommunication market legislation were subject to assessment, taking into consideration existing similarities and differences, as despite substantially similar legal models for financing universal service in both sectors, specific solutions are in fact different.

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