JUDGMENT OF THE COURT (Third Chamber)

13 October 2011 *

In Case C-148/10,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Hof van beroep te Brussel (Belgium), made by decision of 23 March 2010, received at the Court on 29 March 2010, in the proceedings

DHL International NV, formerly Express Line NV,

v

Belgisch Instituut voor Postdiensten en Telecommunicatie,

THE COURT (Third Chamber),

composed of K. Lenaerts, President of the Chamber, D. Šváby, R. Silva de Lapuerta (Rapporteur), E. Juhász and J. Malenovský, Judges,

Advocate General: N. Jääskinen,
Registrar: M. Ferreira, Principal Administrator,

* Language of the case: Dutch.

having regard to the written procedure and further to the hearing on 17 March 2011,

after considering the observations submitted on behalf of:

— DHL International NV, formerly Express Line NV, by F. Vandendriessche and J. Roets, advocaten,

— the Belgian Government, by M. Jacobs, acting as Agent, and by F. Petillion, avocat, and J. Jansen, advocaat,

— the Polish Government, by M. Szpunar, acting as Agent,

— the European Commission, by L. Lozano Palacios and P. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 May 2011,

gives the following

Judgment

1 This reference 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), and in particular

Article 19 of that directive, as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 (OJ 2002 L 176, p. 21) and of the same directive 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 of Article 49 TFEU.

2 The reference has been made in proceedings between DHL International NV, formerly Express Line NV ('Express Line'), and the Belgisch Instituut voor Postdiensten en Telecommunicatie (Belgian Institute for Postal Services and Telecommunications, 'the BIPT') concerning payment of the fee to the financing of the postal sector ombudsman service which Express Line is required to pay.

Legal context

European Union law

3 Recitals 10 and 35 in the preamble to Directive 97/67 read:

'(10) Whereas, in accordance with the principle of subsidiarity, a set of general principles should be adopted at Community level, whilst the choice of the exact procedures should be a matter for the Member States, which should be free to choose the system best adapted to their own circumstances;

…

(35) Whereas the need for improvement of quality of service means that disputes have to be settled quickly and efficiently; whereas, in addition to the forms of legal redress available under national and Community law, a procedure dealing with complaints should be provided, which should be transparent, simple and inexpensive and should enable all relevant parties to participate.'

4 According to Article 2(1), (14) and (17) of Directive 97/67:

'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;

…

(14) "authorisations": means any permission setting out rights and obligations specific to the postal sector and allowing undertakings to provide postal services and, where applicable, to establish and/or operate postal networks for the provision of such services, in the form of a "general authorisation" or "individual licence" as defined below:

— "general authorisation" means an authorisation, regardless of whether it is regulated by a "class licence" or under general law and regardless of whether

such regulation requires registration or declaration procedures, which does not require the undertaking concerned to obtain an explicit decision by the national regulatory authority before exercising the rights stemming from the authorisation,

— "individual licence" means an authorisation which is granted by a national regulatory authority and which gives an undertaking specific rights, or which subjects that undertaking's operations to specific obligations supplementing the general authorisation where applicable, where the undertaking is not entitled to exercise the rights concerned until it has received the decision by the national regulatory authority;

…

(17) "user": any natural or legal person benefiting from universal service provision as a sender or an addressee'.

5 Articles 3 and 4 of Directive 97/67 provide that Member States are to designate one or more providers of a universal service, that is to say, a service involving the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users. As regards those providers which are not designated, Member States may, pursuant to Article 9 of Directive 97/67, introduce either general authorisations, for postal services which fall outside the scope of the universal service, or authorisation procedures including individual licences, for postal services which fall within the scope of the universal service.

6 Furthermore, under Article 7 of Directive 97/67, Member States were generally permitted, to the extent necessary to ensure the maintenance of universal service, to reserve services to a universal service provider or providers until 31 December 2010.

7 Article 19 of Directive 97/67 provides:

'Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards.

Member States shall adopt measures to ensure that those procedures enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Without prejudice to other possibilities of appeal under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to the universal service provider have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.'

8 Recital 28 in the preamble to Directive 2002/39 reads:

'It might be appropriate for national regulatory authorities to link the introduction of licences to requirements that consumers of the licensees' services are to have transparent, simple and inexpensive procedures available to them for dealing with their complaints, regardless of whether they relate to the services of the universal service provider(s) or to those of operators holding authorisations, including individual licence-holders. It might be further appropriate for these procedures to be available to users of all postal services, whether or not they are universal services. Such procedures should include procedures for determining responsibility in case of loss of, or damage to, mail items.'

9 Article 19 of Directive 97/67, as amended by Directive 2002/39, provides:

'Member States shall ensure that transparent, simple and inexpensive procedures are drawn up for dealing with users' complaints, particularly in cases involving loss, theft, damage or non-compliance with service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved).

Member States may provide that this principle is also applied to beneficiaries of services which are:

— outside the scope of the universal service as defined in Article 3, and

— within the scope of the universal service as defined in Article 3, but which are not provided by the universal service provider.

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Without prejudice to other possibilities of appeal under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to the universal service provider have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.'

10 Recital 42 in the preamble to Directive 2008/6 reads:

'(42) In line with existing rules in other service areas and in order to increase consumer protection, it is appropriate to extend the application of minimum principles concerning complaint procedures beyond universal service providers. With a view to increasing the effectiveness of complaint handling procedures, it is appropriate to encourage the use of out-of-court settlement procedures as set out in Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes [OJ 1998 L 115, p. 31] and Commission Recommendation 2001/310/EC of 4 April 2001 on the principle for out-of-court bodies involved in the consensual resolution of consumer disputes [OJ 2001 L 109, p. 56]. Consumer interests would also be furthered through the enhanced inter-operability

between operators resulting from access to certain elements of infrastructure and services, and the requirement for cooperation between national regulatory authorities and consumer protection bodies.

In order to protect the interests of users in the event of theft or loss of, or damage to, postal items, Member States should introduce, where warranted, a system of reimbursement and/or compensation.'

11 Article 2(17) of Directive 97/67, as amended by Directive 2008/6, provides:

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

…

(17) "User": any natural or legal person benefiting from postal service provision as a sender or an addressee.'

12 Article 19 of Directive 97/67, as amended by Directive 2008/6, provides:

'1. Member States shall ensure that transparent, simple and inexpensive procedures are made available by all postal service providers for dealing with postal users' complaints, particularly in cases involving loss, theft, damage or non-compliance with

service quality standards (including procedures for determining where responsibility lies in cases where more than one operator is involved), without prejudice to relevant international and national provisions on compensation schemes.

Member States shall adopt measures to ensure that the procedures referred to in the first subparagraph enable disputes to be settled fairly and promptly with provision, where warranted, for a system of reimbursement and/or compensation.

Member States shall also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users.

2. Without prejudice to other possibilities of appeal or means of redress under national and Community legislation, Member States shall ensure that users, acting individually or, where permitted by national law, jointly with organisations representing the interests of users and/or consumers, may bring before the competent national authority cases where users' complaints to undertakings providing postal services within the scope of the universal service have not been satisfactorily resolved.

In accordance with Article 16, Member States shall ensure that the universal service providers and, wherever appropriate, undertakings providing services within the scope of the universal service, publish, together with the annual report on the monitoring of their performance, information on the number of complaints and the manner in which they have been dealt with.'

National law

13 The Law of 21 March 1991 on the reform of certain public commercial undertakings (*Belgisch Staatsblad* of 27 March 1991, p. 6155), as amended by the Royal Decree of 9 June 1999 (*Belgisch Staatsblad* of 18 August 1999, p. 30697), transposed into the Belgian legal system a number of measures, including Directive 97/67.

14 That law designates a universal service provider and reserves to that provider certain postal services. An individual licence must be obtained in order to provide a non-reserved postal service which falls within the scope of the universal service. The provision of a postal service which falls outside the scope of the universal service is subject to the requirement, *inter alia*, of a declaration to the BIPT.

15 Article 43b of that law, as amended by the Law of 21 December 2006 providing for the establishment of an ombudsman service for the postal sector and amending the Law of 13 June 2005 concerning electronic communication (*Belgisch Staatsblad* of 23 January 2007, p. 2965; 'the 1991 Law'), provides:

'1. An ombudsman service for the postal sector shall be set up within the [BIPT], with responsibility in matters relating to the users of the following undertakings:

(1) [the universal service provider];

(2) undertakings which provide postal services … and which are subject to a licensing requirement …;

(3) undertakings which provide postal services … and which are subject to a declaration requirement …

Matters relating to users are matters relating to the interests of users who do not themselves provide postal services.

…

3. The ombudsman service for the postal sector shall be responsible for the following tasks:

(1) examining all user complaints relating to:

(a) the activities of [the universal service provider] …

(b) the postal activities of the undertakings referred to in paragraph 1(2) and (3) of the present article.

(2) For the purposes of this chapter, "postal activities" means:

…

(3) acting as a mediator in order to facilitate an amicable settlement in disputes between the undertakings referred to in paragraph 1 of the present article and users;

(4) making a recommendation to the undertakings referred to in paragraph 1 of the present article in the event that an amicable settlement cannot be reached. A copy of the recommendation shall be sent to the complainant;

(5) providing users who contact them verbally or in writing with the best available advice on their rights and interests;

(6) issuing, at the request of the minister responsible for the postal sector, the minister responsible for consumer protection, the [BIPT] or the consultative committee for postal services, opinions in relation to its tasks;

(7) cooperating with:

(a) other independent sector-specific dispute commissions or independent ombudsmen …;

(b) foreign ombudsmen or bodies having an equivalent function which act as an appeal body handling complaints falling within the area of responsibility of the ombudsman service for the postal sector.

Where appropriate, cooperation agreements may be concluded by the minister responsible for consumer affairs.

4. The complaints of end-users shall be admissible only where the complainant has lodged a complaint in accordance with the internal procedure of the undertaking concerned. The complaints of end-users shall be inadmissible where they are lodged anonymously or are not lodged in writing with the ombudsman service for the postal sector.

…

5. The ombudsman service for the postal sector may, where a complaint is made to it, investigate on site the books, correspondence, minutes and, in general, all the documents and records of the undertaking or undertakings concerned relating directly to the subject-matter of the complaint, with the exception of items covered by the confidentiality of correspondence. It may request any explanations or information from the administration and personnel departments of the undertakings concerned and carry out all the checks required for its investigation.

Information obtained in this way shall be treated as confidential where disclosure might generally cause damage to the undertaking.

Within the bounds of its area of responsibility, the ombudsman service shall not make enquiries at the instance of any authority.

Examination of a complaint shall cease where it is the subject of legal proceedings.

6. The undertaking concerned shall have a time-limit of 20 working days within which to provide reasons for its decision where it fails to follow the recommendation referred to in paragraph 3(4) of the present article. The reasoned decision shall be sent to the complainant and to the ombudsman service.

After the time-limit referred to in the preceding subparagraph has expired, the ombudsman service shall send a reminder to the undertaking concerned. The latter shall have a further time-limit of 20 working days within which to provide reasons for its decision where it fails to follow the recommendation referred to in paragraph 3(4) of the present article. The reasoned decision shall be sent to the complainant and to the ombudsman service.

On failure to meet the time-limit concerned, the undertaking must implement the opinion in respect of specific and personal compensation for the complainant.

7. If a user's complaint is declared admissible by the postal sector ombudsman service, recovery proceedings shall be suspended by the operator for a maximum period of four months from the time the complaint is lodged with the ombudsman service or until such time as the ombudsman service for the postal sector has drawn up a recommendation or an amicable settlement can be reached.'

16 Article 45b of the 1991 Law governs the financing of the ombudsman service for the postal sector, providing for an annual 'ombudsman fee' to be paid to the BIPT by those undertakings referred to in Article 43b(1) of that law which have a turnover of more than EUR 500 000.

17 The amount of the fee payable is determined annually by the BIPT according to a formula which, in essence, takes into account, first, the turnover of the undertaking in question for the preceding year from activities which fall within the area of responsibility of the ombudsman service and, secondly, the number of complaints against that undertaking which have been dealt with by the ombudsman service during the preceding year. Any fees not paid by the due date are automatically to bear interest at the statutory rate plus 2 %.

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

18 Express Line is part of the DHL group of companies, with its principal place of business in Bonn (Germany). Express Line describes its activity as consisting, inter alia, of providing express delivery services, that is to say, the transport of documents, parcels, pallets and wagon loads by means of individualised air or road transport.

19 At the beginning of 2006, the BIPT gave Express Line and several other undertakings providing courier and express delivery services formal notice that they should apply for an individual licence or make a declaration, in accordance with the relevant provisions of the 1991 Law relating to the provision of services which the BIPT regarded either as non-reserved postal services falling within the scope of the universal service, or as postal services falling outside the scope of the universal service.

20 On 23 November 2006, in accordance with the 1991 Law, Express Line made in respect of some of its services a declaration relating to the provision of postal services falling outside the scope of the universal service. However, it made that declaration subject to the express proviso that it did not accept the classification of its express delivery services as 'postal services'.

21 By letter of 11 July 2007 the BIPT informed Express Line that it came within the remit of the ombudsman service and that it was therefore regarded as liable for the ombudsman fee, and asked it for information in order to calculate the amount of the required fee.

22 Express Line maintained its position by registered letter, denying that it came within the remit of the postal sector ombudsman service and was therefore required to pay the fee to finance that service. It claimed that its express delivery services were not postal services but transport and logistics services with added value, designed for businesses.

23 On 13 November 2008 the BIPT held that Express Line had contravened the 1991 Law and gave it formal notice that it should supply the information needed for the calculation of the amount of the ombudsman fee it was liable to pay, failing which an administrative fine would be imposed. Express Line brought an action against that notice before the national court.

24 It was in those circumstances that the Hof van beroep te Brussel (Court of Appeal, Brussels) (Belgium) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Must the provisions of Directive 97/67 …, as amended by Directive 2002/39 …, and in particular, but not exclusively, Article 19 thereof, in view inter alia of the amendments introduced by Directive 2008/6 …, which must be transposed into national law by 31 December 2010 at the latest, be understood and interpreted

as precluding Member States from imposing a mandatory external complaints scheme on providers of non-universal postal services on the ground that:

(a) as regards the applicable complaints procedures for the protection of the users of postal services, the Directive provides for full harmonisation; or on the ground that

(b) that obligation was imposed by Directive 2002/39 … only on the universal service provider and, following Directive 2008/6 …, is imposed on all universal service providers, even though, according to the wording of the [third] subparagraph of Article 19(1) of [Directive 97/67 …, as amended by] Directive 2008/6 …, Member States may only encourage, but may not impose, the development of independent schemes for the resolution of disputes between the providers of postal services, other than universal postal services, and end-users?

(2) If the answer to the first question is that the Postal Directive does not, as such, preclude Member States from imposing on the providers of non-universal postal services a mandatory external complaints scheme as envisaged by the first subparagraph of Article 19(2) [of Directive 97/67, as amended by Directive 2008/6] for the providers of universal postal services, must the principles relating to the free movement of services (Article 49 et seq. EC; now Article 56 et seq. TFEU) be interpreted in such a way that restrictions on the free movement of services, introduced by a Member State on grounds of overriding reasons in the public interest relating to consumer protection, whereby the providers of non-universal postal services are made subject to a mandatory external complaints scheme as provided for in the first subparagraph of Article 19(2) [of Directive 97/67, as amended by Directive 2008/6] for the providers of universal postal services, can be considered compatible with the Treaty on the Functioning of the European Union even if, in the application of the complaints scheme concerned, no distinction is made

between the complaints of consumers and those of other end-users, although the vast majority of the users of those services (in the present case, express delivery and courier services) are business users?'

Consideration of the questions referred

Preliminary observations

25 According to Express Line, first, the national court should have referred an additional question to the Court, but had expressly refused to do so, namely whether Article 2(1) of Directive 97/67 must be interpreted as precluding national legislation which regards as postal services not only those services which cover all the activities of clearance, sorting, transport and delivery of postal items, but also services covering one or more of such activities.

26 Secondly, the applicant in the main proceedings considers that, since it has withdrawn its pleas relating to European Union law in the main proceedings, the present order for reference serves no purpose.

27 In that regard, it should be borne in mind that, in the context of the cooperation between the Court of Justice and the national courts provided for by Article 267 TFEU, 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 (see, inter alia, Case C-306/99 *BIAO* [2003] ECR I-1, paragraph 88; Case C-217/05 *Confederación Española de Empresarios de Estaciones de Servicio* [2006] ECR I-11987, paragraph 16; and Case C-260/07 *Pedro IV Servicios* [2009] ECR I-2437, paragraph 28).

28 The right to determine the questions to be put to the Court thus devolves upon the national court alone and the parties may not change their tenor. In addition, to alter the substance of the questions referred for a preliminary ruling, or to answer the additional questions mentioned by the applicants in the main proceedings in their observations, would be incompatible with the Court's function under Article 267 TFEU and with its duty to ensure that the governments of the Member States and the parties concerned are given the opportunity to submit observations under Article 23 of the Statute of the Court of Justice of the European Union, bearing in mind that under that provision only the order of the referring court is notified to the interested parties (see Case C-138/08 *Hochtief and Linde-Kca-Dresden* [2009] ECR I-9889, paragraphs 21 and 22 and the case-law cited).

29 Moreover, the Court cannot give a ruling where the procedure before the court making the reference for a preliminary ruling has already been terminated (Case C-343/90 *Lourenço Dias* [1992] ECR I-4673, paragraph 18), nor does Article 267 TFEU entitle the Court to assess the immediacy of the relevance of questions referred with regard to the proceedings pending before the national court, even where the domestic law with which the case is concerned has been modified (Case 43/71 *Politi* [1971] ECR 1039, paragraph 3).

30 In the present case, since the national court has accepted neither the need nor the relevance of a question concerning the cumulative or alternative nature of the activities covered by the term 'postal services' within the meaning of Article 2(1) of Directive 97/67, the Court cannot undertake an analysis in that regard.

31 Further, since the national court has not formally withdrawn its reference for a preliminary ruling, despite the request to that effect made by the applicant in the main proceedings, and the main proceedings have not been terminated, it must be held that the Court's answer to the questions referred by that court are still necessary in order to enable the latter to deliver judgment.

The first question

32 By its first question, the national court asks, in essence, whether Directive 97/67, in the light of the amendments made by Directives 2002/39 and 2008/6, must be interpreted as precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.

33 As a preliminary point, it should be noted that Article 19 of Directive 97/67, both in its original version and in the version as amended by Directives 2002/39 and 2008/6, lays down two types of procedure for dealing with complaints by users of postal services, namely, an internal procedure whereby a complaint is made to the service provider and an external procedure whereby a complaint is made to the competent national authority.

34 The national court expresses doubts as to the possibility of imposing a mandatory external complaints procedure on providers of postal services which are outside the scope of the universal service, given that, according to that court, Directive 97/67 carried out full harmonisation as regards complaints procedures and such an obligation

was imposed only on universal service providers, following the amendments made by Directive 2002/39, and on all other providers of postal services falling within the scope of the universal service, following the amendments made by Directive 2008/6.

35 In that regard, it should first be noted that, contrary to the view of the national court, Directive 97/67 does not carry out a full harmonisation of the complaints procedures for which it provides.

36 As is clear from recital 10 in the preamble to Directive 97/67, that directive constitutes a framework of general principles adopted at European Union level, the determination of the exact procedures being a matter for the Member States (Case C-240/02 *Asempre and Asociación Nacional de Empresas de Externalización y Gestión de Envíos y Pequeña Paquetería* [2004] ECR I-2461, paragraph 30), which must be free to choose the system best adapted to their own circumstances.

37 Further, such absence of full harmonisation is all the more evident in the case of the complaints procedures provided for in Directive 97/67.

38 It is apparent from recital 35 and from Article 19 of Directive 97/67, in its original version and subsequent versions, that the complaints procedures, which must be transparent, simple and inexpensive, are on the one hand intended to improve the quality of service by providing that any disputes are settled quickly, fairly and efficiently and on the other are in addition to the means of legal redress available under national and European Union law.

39 Secondly, the other doubts expressed by the national court as to whether the 1991 Law complies with Directive 97/67 must be dismissed because they do not reflect the content of the relevant provisions of that directive, in its original version or in its subsequent versions, as regards complaints procedures.

40 Directive 97/67 has always provided that such procedures are additional to the means of legal redress available under national law and, hence, that Member States had freedom of action in that regard. While the amendments made to that directive have progressively limited that freedom of action, the restrictions and guidelines thus laid down are designed to extend the complaints procedures to any provider of postal services.

41 Thus, first of all, under Article 2(17) and the first and third paragraphs of Article 19 of Directive 97/67, Member States were to ensure that internal and external procedures for dealing with complaints were drawn up, by universal service providers, relating solely to the provision of universal services. The obligation incumbent on Member States therefore was confined to such services and such service providers, and those States still enjoyed freedom of action allowing them to make available other means of redress.

42 Then, Directive 2002/39 added inter alia a fresh paragraph to Article 19, according to which Member States could provide that the 'principle' of ensuring that procedures for dealing with complaints be drawn up would also be applicable with regard to persons benefiting from services which fell outside the scope of the universal service or which fell within the scope of that service but were not provided by the universal service provider.

43 In essence, since the wording of the original version of the third paragraph of Article 19 was not amended, the obligation on Member States and their freedom of action, referred to in paragraph 41 above, remained the same in both versions of Directive 97/67. However, as is apparent from recital 28 in the preamble to Directive 2002/39, the purpose of the amendments incorporated into Article 19 of Directive 97/67 was to encourage Member States to extend the internal complaints procedures for the benefit of users of all postal services, whether universal services or not, and irrespective of whether the provider of those services is the universal service provider or the holder of an authorisation.

44 Lastly, Directive 2008/6 amended inter alia Article 2(17) of Directive 97/67 and the first paragraph of Article 19 of that directive, as amended by Directive 2002/39, by providing that all postal service providers must draw up internal procedures for dealing with users' complaints; users being defined as any natural or legal person benefiting from postal service provision.

45 The third subparagraph of Article 19(1) of Directive 97/67, as amended by Directive 2008/6, which is a new provision, provides that Member States must also encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users. The first subparagraph of Article 19(2) also contains a new obligation since it extends the external procedure for dealing with users' complaints to undertakings providing postal services within the scope of the universal service.

46 As is apparent from recital 42 in the preamble to Directive 2008/6, those amendments are intended to extend the application of the minimum principles laid down for dealing with complaints beyond universal service providers.

47 It follows that Directive 97/67, in its original version and in its amended versions, envisages the complaints procedures for which it provides as a minimum framework that is to be additional to the means of redress available under national and European Union law, and Member States therefore have freedom of action to lay down exact procedures and choose the system best adapted to their own circumstances, subject to the restrictions and guidelines laid down in that directive.

48 Those restrictions and guidelines consist, first, in the obligation to ensure that the universal service provider or universal service providers establish internal and external procedures for dealing with users' complaints, an obligation already laid down in the original version of Directive 97/67.

49 Further, Directive 97/67 imposed the obligation to ensure the establishment of internal procedures by all postal service providers and of external procedures by undertakings providing postal services within the scope of the universal service, an obligation introduced by Directive 2008/6, in addition to the guidelines already laid down in Directive 2002/39.

50 Lastly, there is an obligation under Directive 97/67 to encourage the development of independent out-of-court schemes for the resolution of disputes between postal service providers and users, an obligation introduced by Directive 2008/6.

51 Therefore, national legislation such as the 1991 Law, which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services, not only is not incompatible with Directive 97/67, in its original version and in its amended versions, but also complies with the obligation laid down in that directive, following its amendment by Directive 2008/6, to encourage the development of independent,

out-of-court schemes for the resolution of disputes between postal service providers and users.

52 Consequently, the answer to the first question referred is that Directive 97/67, in its original version and in the versions as amended by Directives 2002/39 and 2008/6, must be interpreted as not precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.

The second question

53 By its second question, the referring court asks, in essence, whether Article 56 TFEU must be interpreted as precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.

54 As a preliminary point, it should be noted that although Express Line is a company incorporated under Belgian law, it is none the less part of the DHL group of companies, with its principal place of business in Germany. Moreover, it is not apparent from the order for reference or from the facts in the main proceedings that those proceedings relate to a particular provision of services between two or more Member States.

55 In those circumstances, the freedom at issue in the main proceedings is not freedom to provide services but freedom of establishment. Consequently, the second question must be construed as asking whether Article 49 TFEU must be interpreted as precluding national legislation, such as the 1991 Law, which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.

56 According to the national court, the obligation to submit to such a procedure constitutes a restriction on the freedom of establishment of providers of postal services which are outside the scope of the universal service originating in Member States other than the Kingdom of Belgium which seek to establish themselves in that Member State. Although that restriction may be justified by an overriding reason in the public interest relating to consumer protection, Article 49 TFEU does not allow the mandatory imposition of that procedure in the case of disputes concerning postal services such as express delivery services, where a large majority of users are business users.

57 In that regard it should be observed that, as noted in paragraph 35 of this judgment, Directive 97/67 does not carry out a full harmonisation of the procedures for dealing with complaints by users of postal services and, consequently, that the Member States have freedom of action in that regard, subject to the limits imposed by European Union law.

58 With regard to freedom of establishment for nationals of one Member State on the territory of another Member State, according to settled case-law, such freedom includes the right to take up and pursue activities as self-employed persons and to set up and manage undertakings under the conditions laid down for its own nationals

by the law of the Member State of establishment (see Case C-247/08 *Gaz de France - Berliner Investissement* [2009] ECR I-9225, paragraph 54 and the case-law cited).

59 As regards companies or firms formed in accordance with the law of a Member State and having their registered office, central administration or principal place of business within the European Union, that freedom includes, pursuant to Article 54 TFEU, the right to exercise their activity in the Member State concerned through a subsidiary, branch or agency (see, inter alia, Case C-307/97 *Saint-Gobain ZN* [1999] ECR I-6161, paragraph 35; Case C-196/04 *Cadbury Schweppes and Cadbury Schweppes Overseas* [2006] ECR I-7995, paragraph 41; and Case C-524/04 *Test Claimants in the Thin Cap Group Litigation* [2007] ECR I-2107, paragraph 36).

60 The Court has held on a number of occasions that Article 49 TFEU precludes any national measure which, even if applicable without discrimination on grounds of nationality, is liable to hinder or render less attractive the exercise by Union nationals of the freedom of establishment that is guaranteed by the Treaty and that such restrictive effects may arise where, on account of national legislation, a company may be deterred from setting up subsidiary bodies, such as permanent establishments, in other Member States and from carrying on its activities through such bodies (Case C-384/08 *Attanasio Group* [2010] ECR I-2055, paragraphs 43 and 44 and the case-law cited).

61 In the present case, the measure in question does not involve any restriction on freedom of establishment.

62 First, that measure is applied, without discrimination on grounds of nationality, to all providers established in Belgium of postal services which are outside the scope of the universal service. Secondly, as the Advocate General stated in point 77 of his Opinion, operators cannot expect Member States not to have structures in place which afford legal protection for the interests of their customers and provide out-of-court

procedures for settling disputes. Lastly, nearly all Member States have extended the external complaints schemes to providers of postal services which are outside the scope of the universal service.

63 In those circumstances, it cannot validly be claimed that the mere fact of imposing on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services is liable to hinder or render less attractive the exercise by Union nationals of the freedom of establishment that is guaranteed by the Treaty.

64 Consequently, the answer to the second question is that Article 49 TFEU must be interpreted as not precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.

Costs

65 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 (Third Chamber) hereby rules:

1. **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, in its original version and in the versions as amended by Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 and by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, must be interpreted as not precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.**

2. **Article 49 TFEU must be interpreted as not precluding national legislation which imposes on providers of postal services which are outside the scope of the universal service a mandatory external procedure for dealing with complaints from users of those services.**

[Signatures]