



## PRESS RELEASE No 136/23

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Judgment of the Court in Case C-226/22 | Nexive Commerce and Others

### **Operational costs of the postal sector regulatory authority: a contribution obligation may be imposed on market participants, excluding any State funding**

*This financial burden may be imposed in a uniform manner on all operators in that sector, including on providers of express mail services, without distinction according to the different types of postal services provided*

Nexive Commerce Srl and other economic operators providing express mail services brought actions before the Regional Administrative Court, Lazio (Italy), seeking annulment of certain decisions of the Italian Communications Regulatory Authority ('AGCOM') which had identified them as liable to pay the contribution to the costs relating to the operation of AGCOM as the national regulatory authority responsible for the postal sector. They also specify the method of calculating the contribution and the amount for 2017, 2018 and 2019. Under the applicable Italian law, the universal postal service providers and persons holding a licence or general authorisation are liable to pay that contribution. The Directive for the development of postal services<sup>1</sup> allows Member States to make the granting of authorisations to operators in the postal sector subject to an obligation to make a financial contribution to the operational costs of the national regulatory authorities ('NRAs') in the sector.

Those actions having been dismissed at first instance, Nexive Commerce and Others appealed before **the Italian Council of State**. That court **referred questions to the Court of Justice on the scope of the contribution to the financing of the 'operational costs' of the NRAs in the postal sector**.

By its judgment delivered today, **the Court replies, first of all, that a Member State may opt for a mechanism of financing the NRA responsible for the postal sector funded exclusively by means of contributions imposed on operators in that sector, to the exclusion of any funding from the State budget**. According to the Court, the Directive leaves it to the Member States to choose between a system of financing based exclusively on the charges imposed on postal operators, a system of financing from the national budgets or, lastly, a hybrid co-financing system, provided that it is ensured that those NRAs have the necessary resources for their proper functioning.

Next, the Court holds that the **operational costs of the NRAs in the postal sector capable of being financed by such a mechanism include the costs of their regulatory activities relating to postal services which fall outside the scope of the universal service as well as the costs generated by the activities which, while not directly linked to the regulatory task of those authorities, contribute to the performance of their function of regulating the postal sector**.

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<sup>1</sup> 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 L 52, p. 3).

Lastly, **the Court takes the view that national legislation may, in order to ensure that the NRA responsible for the postal sector has financing such as to enable it to perform its tasks relating to the regulation of the postal sector in complete independence, impose, in a uniform manner, on all operators in that sector an obligation to contribute to the financing of the NRA's operating costs, without taking account of the intensity of the regulatory tasks carried out according to the different types of postal services and without making a distinction between universal postal service providers and express mail operators. The obligation imposed must be transparent, accessible, precise and unambiguous, made public in advance and based on objective criteria.**

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of an EU act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎(+352) 4303 3355

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