

# **The Future EU Postal Regulation. What Can Be Learnt from the Telecommunication Regulations**

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## **Abstract**

Postal and telecommunication markets are part of the network industry, regulated by specific regimes. After a long period of legal monopoly, the telecommunication market was fully liberalized before the postal one. Thus, the telecommunication regulatory framework has always been a pattern for the postal market in the EU. These two markets constantly develop in the fast-changing technological environment and shifting customer demands. The paper deals with the regulatory challenges of the EU postal market in light of the recently adopted telecommunication regulation - the EU Directive 2018/1972 establishing the European Electronic Communications Code. The directive has set new regulatory goals changing them to focus on high-speed internet connectivity and a more consumer-oriented market. The current postal regulatory framework has achieved all its goals and needs new ones to adjust the market to contemporary challenges. First, the paper critically analyzes the current EU regulatory framework in the postal market. Then, it proposes a new regulatory model considering market needs like mail-oriented universal postal service, fast-growing e-commerce, and the competition from new entrants.

**Keywords:** postal regulation, telecommunication regulation, European Electronic Communication Code, e-commerce, regulatory model,

## **1. Introduction**

The postal and telecommunication sectors are parts of the same family – described as a network industry under specific regulatory regimes. In an allegorical comparison, the postal sector is like the older sister for the telecommunication sector. Nevertheless, these siblings

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certainly play a unique role in one another's lives. Over recent years, the shape of these two markets has constantly been changing, irrespective of countries' regulations and policies. Technological telecommunication and electronic communication developments have significantly impacted the postal market, especially in the form of e-commerce, platformization or new e-government services (the digitalization). This development has caused dynamic structural changes that are associated with two modern business trends: a sizable decrease in the revenue and volumes of traditional letter services (which used to be the core postal business), and dynamic growth of courier items (D. Coen and A. Hérítier, 2005, p. 21). The COVID-19 pandemic only accelerated this inevitable tendency (M. Chołodecki, 2023, p. 256). Recent developments triggered a discussion about the legal framework of the EU postal market. Therefore, in 2019, the EU Commission announced a consultation for the new directive on the postal regulatory framework. Similar processes caused by technological development and a new consumer approach to telecommunication services led to the adoption of the new EU Directive 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code (EECC),<sup>2</sup> which the EU Member States were obliged to implement by the end of 2020<sup>3</sup>. The new Code represents the first complete overhaul of the EU regulatory framework for the telecommunications market since 2002. The EECC changes some of the telecommunications market's regulatory principles to adjust this sector to the new times and social demands.

Telecommunication regulation has always been a reference point for postal regulation. Despite all the differences, the EU telecom policy has always been one step ahead of the postal regulation. Thus, the newest telecommunication regulation - the EECC - should be seen as a vital sign for future postal service regulation. The development of the postal sector causes new problems to arise that require new regulatory approaches. The postal sector's development causes new problems that require new regulatory approaches. Therefore, the paper aims to reflect on the potential regulatory model for the EU postal market and the possible regulatory objectives. The more immediate aim is to understand why competition hardly exists in the traditional segment of the postal market and why it blooms on to the alternative one. Additionally, the paper discusses the possible effect of the EECC on the

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<sup>2</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance, OJ L 321, 17.12.2018, p. 36–214.

<sup>3</sup> However, some EU Member States have still not implemented all the EECC legal solutions to national legislation.

forthcoming EU postal regulation. Thus, the paper undertakes a critical investigation of the current regulatory framework of the EU postal market in light of the EECC.

Section 2 presents the regulatory development of the two considered markets. Section 3 focuses on the most significant changes introduced by the EECC to the telecommunication regulatory framework that could have an impact on the postal market regulation. Section 4 discusses the current situation in the postal market with a critical investigation of the regulatory framework. The postal framework's three main elements, the Universal Service Obligation (USO), competition and regulatory power, and the Courier, Express and Parcel Services (CEP) segment are discussed. Finally, section 5 concludes the paper. The conclusions may provide valuable lessons for the future policy design of the postal markets in the EU and the optimal policy design of pro-market policies.

## **2. From the state monopolies to liberalized markets in the EU**

The postal and telecom markets are part of the network industries (J. Soares, J. Confraria, et al., 2002, p. 159). These two markets form the communication sector, which is fundamental to modern societies. In Europe, these sectors were characterized by monopoly (legal) and public ownership until the end of the 20th century. The monopolized postal and telecom markets usually contained one state-owned operator. These operators were often part of the public administration with special exclusive rights on the market (W. Hulsink, 2012, p. 5). As a result, the same operator offered postal and telecom services. In the last three decades, such a situation was put into question. Finally, the liberalization process removed the entry barriers from the markets at the end of the 20th century. The telecom sector was one of the first to be liberalized, and the postal sector was one of the last ones.

In terms of technological and consumer expectations, these two sectors have undergone a comparable change in the past 30 years. The telecom sector has been transformed from analog transmission to digital; from providing fixed telephony to internet access and mobile telephony (M. Cave, Ch. Genakos, et al., 2019, p. 48). The postal market has changed from delivering traditional mail (letters) to delivering parcels, from the postal operators being an “analog connector” between citizens and the government to a digital public e-service provider. After nearly thirty years of separation, these two markets are coming closer to each other (P. Gori and P. L. Parcu, 2020, p. 1-12). This rapprochement is now technical, since some of the same infrastructure is used to perform their service; thus, it is not only formal,

i.e., grouped in the same public unit as it used to be. However, a significant distinction lies in the fundamental nature of these transformations. The telecom sector's evolution primarily relies on technology, where automation and digitization have resolved bottlenecks and reduced labour-intensive processes. In contrast, the postal sector, particularly in the distribution phase (last-mile delivery) remains labour-intensive and consequently more expensive. This distinction underscores a crucial factor shaping these markets. Moreover, recent innovations in the postal sector, such as out-of-home delivery points like parcel lockers, have begun to address this labour-intensive aspect, introducing technological efficiencies. This blend of technology and labour remains a defining characteristic of the postal market, differentiating it from the telecom sector.

It is essential for this study to recognize that the regulatory approach adopted for the EU telecommunications markets serves more as a model than as a direct pattern for postal regulation. These sectors' unique characteristics, particularly regarding technology and labor reliance, necessitate distinct regulatory strategies, even as they draw closer together in the digital age.

#### **a. Telecommunication market**

The process of full liberalizing telecoms in the EU was similar to that in the US (V. Mayer-Schönberger, M Strasser, 1999, p. 572). The European Commission (EC) initiated the process of liberalizing the telecommunication markets by issuing the Green Paper on the Development of a Common Market for Telecommunications Service and Equipment in 1987 (R. Klotz, 2009, p. 56-58)<sup>4</sup>. From the very beginning, the EU regulatory approach to the telecommunication market was based on establishing free competition on the market. The liberalization of the telecommunication market shifted all legal barriers to entering the market. With this process, sector-specific regulation was introduced. At the outset, the EU lawmakers assumed that competition law could not solve the market's structural obstacles, such as access to the essential facilities owned by the former monopolist. Sector-specific regulation gives the possibility to impose an *ex-ante* obligation, i.e., cost-oriented access to essential facilities. This regulation is described as pro-competitive (A. Pera, A. Pezza, 2016) since it provides a legal toolbox for creating an environment that allows new entrants to enter the market. The application of sector-specific regulation requires a special regulatory body, independent from

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<sup>4</sup> Towards A Dynamic European Economy, Green Paper on the Development of a Common Market for Telecommunications Service and Equipment; COM (1987) 290 final.

market players and the government (as long as the state owns telecommunication operators). The next significant breakthrough legislation was the previous regulatory framework from 2002.

The 2002 regulatory framework for the EU telecommunication markets consisted of a set of directives: a common framework directive and four specific directives covering different issues: access and interconnection, authorization of electronic communications networks, universal services, and privacy directives<sup>5</sup>. In contrast, in the new framework the traditional term ‘telecommunication’ has been replaced by the new term ‘electronic communications’. There are two cornerstone goals of this regulatory framework: the promotion of competition and access to universal telecommunication services. Market regulation is the instrument for ensuring effective competition on the market by granting alternative operators access to the existing incumbents' networks and services under fair and non-discriminatory conditions (R. Klotz, 2009, p. 89). Universal service is safeguarded by the regulatory measures as well. The accomplishment of these goals required the creation of a harmonized enforcement practice within the EU by the National Regulatory Authorities (NRAs) and the EU Commission. The Telecoms Package only introduced minor reforms to the regulatory framework in 2009<sup>6</sup>. The reform focused mainly on an open internet, a single European telecoms market, and high-speed internet connections for all citizens. Nevertheless, the two main regulatory goals, i.e., promoting competition and universal service, did not change. Additionally, the Telecoms Package created the Body of European Regulators for Electronic Communications (BEREC)<sup>7</sup> as an advisory group consisting of NRAs and EU

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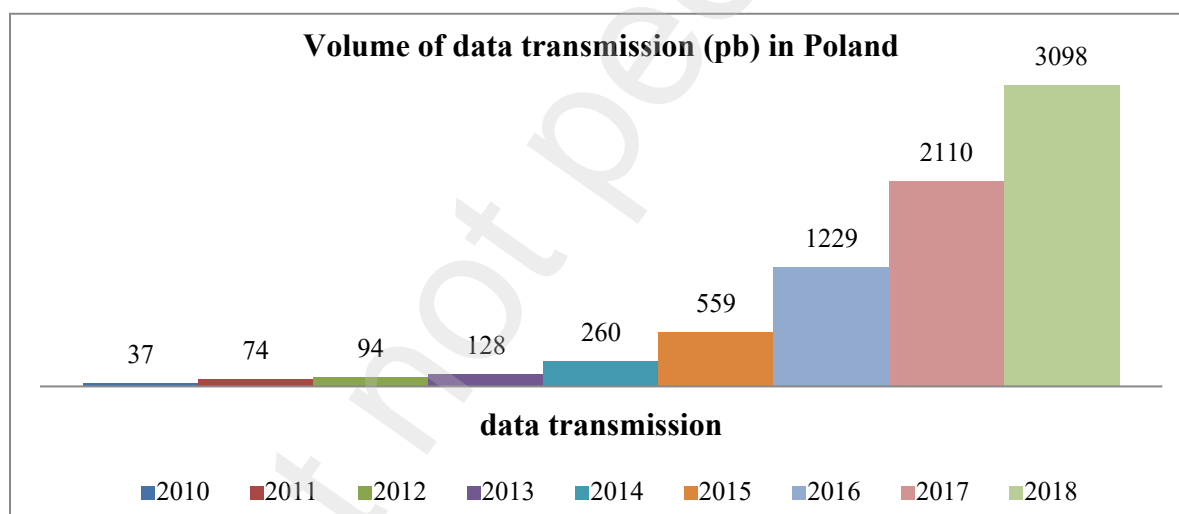
<sup>5</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7); Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorization of electronic communications networks and services (Authorization Directive) (OJ L 108, 24.4.2002, p. 21); Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33); Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>6</sup> Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1–35).

<sup>7</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ L 337, 18.12.2009, p. 37–69).

commission staff<sup>8</sup>. The establishment of BEREC was a step towards an internal telecom market in the EU but still with the leading role of the Member States and NRAs in the regulatory functions (G. Monti, 2008). In such a regulatory environment, the EU Commission began to perform the function of a supreme regulator or the regulator of regulators (J. Worthy, R. Kariyawasam, 1998). A common model in the other regulated network markets. Nevertheless, the 2002 regulatory framework was under-criticized mainly due to the lack of regulatory vision of the market (P. Larouche, 2003; A. de Streel, 2008 and Ch. Hocepiet, A. de Streel, 2005). However, the main regulatory goals were generally fulfilled<sup>9</sup>, and the telecommunication market has changed fundamentally from the time the liberalization agenda was adopted (W. H. Melody, 2012, p. 232).

The shift in Poland's volume of data transmission (pb), presented in Fig. 1, could be a good example of the EU effect of the regulatory policy and mobile users' habits caused by technological changes. Such changes indicate that the telecoms market in the EU has been changing incredibly quickly.



**Fig. 1 Volume of data transmission (pb) in Poland 2010-2018<sup>10</sup>.**

## **b. Postal market**

<sup>8</sup> For more about the evolution of the EU regulatory body for telecommunication market, see: M. Thatcher, D. Coen, *Reshaping European regulatory space: An evolutionary analysis*, "West European Politics" 2008, vol. 31, Issue 4.

<sup>9</sup> EU Commission, Implementation of the EU regulatory framework for electronic communication – 2015, Brussels, 19.6.2015, SWD(2015) 126 final.

<sup>10</sup> Source Report on the state of the telecommunications market in Poland in 2018, UKE.

There is no doubt that the postal service plays a vital role in each society, as an essential instrument of communication and trade. However, before the liberalization process began in Europe, most postal operators were part of the public administration, performing various public duties as a special link between the state (government) and citizens. As a result, the postal service was associated with the state. Thus, postal legislation used to be focused on the state-owned postal operator, which performed special duties and obligations assigned to them by the state (public services).

The recent development of postal services triggered a discussion about the legal framework of the postal markets in the EU, i.e., in terms of the exclusive rights of the incumbent postal operators. Consequently, on 11 June 1992, the Commission presented a Green Paper on the development of the single market for postal services and, on 2 June 1993, a Communication on the guidelines for the development of Community postal services. Therefore, at the end of the 20th century, some EU countries liberalized their postal markets, such as Sweden, which fully opened its market in 1993 (M.A. Crew and P.R. Kleindorfer, 2008, p. 3). In the next step, the EU adopted the Postal Services Directive 97/67/EC of 15 December 1997<sup>11</sup>, which established the first regulatory framework for the European postal services. Market liberalization and a universal service obligation were the major components of the directive (M. Chołodecki and B. Popowska, 2018, p. 8-9). In addition, the directive emphasized that the liberalization of the market must be carried out to secure a proper balance and guarantee the rights of the universal service providers (H. Cremer et al., 2008, p. 23). The directive was amended twice by Directive 2002/39/EC<sup>12</sup> and Directive 2008/6/EC<sup>13</sup> (the so-called 3rd Postal Directive). The 3rd Postal Directive introduced the legal basis for accomplishing the internal market for the postal services by providing the last legislative step in the process of gradual market opening. However, most Western EU countries fully implemented the EU postal regulations before the 3rd Postal Directive was introduced. As a result, by 2008, their postal markets had already passed the structural transformation process (A. Pimenta and A.M. Amaral, 2011, p. 61-62). There were two main objectives of the postal directives: liberalization of the market and safeguarding the kind of services that led to

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<sup>11</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 L 15, 21.1.1998, p. 14–25.

<sup>12</sup> Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176, 5.7.2002, p. 21–25.

<sup>13</sup> Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008, p. 3–20.

establishing the USO. Both of these objectives have been achieved (Hearn, 2020). Such a situation indicates the need for evaluating the postal framework and the establishment of new regulatory goals that will recognize and effectively address the evolving dynamics in the postal market. This includes considerations for the parcel market, integration of parcel lockers as an integral component of the postal infrastructure, and other pertinent factors<sup>14</sup>.

As mentioned above, there are notable differences in the regulatory approaches to the telecom and postal markets. The most significant one is the different strategies safeguarding effective competition in the markets. In particular, there is an almost complete absence of pro-competitive sector-specific regulation on the postal market. Postal NRAs are not equipped in the *ex-ante* regulatory toolbox. Thus, ensuring competition in the postal market is not a goal of the regulatory framework. Instead, the EU lawmakers have limited the Postal Directives to just shifting all the legal barriers to entering the market. Protection of the Universal Service Provider (USP) caused the existence of two main segments of the postal market traditional letter markets operated by the incumbents and courier operators focused on e-commerce with strong competition.

### **3. European Electronic Communications Code**

The 2002 regulatory regime for electronic communications, composed of five separate directives, was replaced in 2018 by the EECC. This chapter is intended to demonstrate the essential issues that will most probably impact the future postal regulation in the EU, particularly with regard to the convergence of the postal and telecommunications sectors: a) The need for a change – from fixed-telephony to the internet. The increasing reliance on digital communication may lead to a decrease in traditional postal volumes, prompting postal operators to adapt to changing customer preferences. b) Very high capacity networks – a new regulatory obligation. This goal has implications for the postal industry, as it can enhance the efficiency of parcel delivery services and support the growth of e-commerce, which relies heavily on both high-speed internet and effective postal networks. c) Promoting competition and d) Universal service – The EECC maintains a commitment to universal service in

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<sup>14</sup> See the documents prepared by the European Regulators Group for Postal Services (ERGP): Response to the Public Consultation on the PSD Evaluation, ERGP PL (20) 27 (2020); ERGP Response to the Digital Services Act (DSA) Public consultation, ERGP (20) 16 (2020); ERGP Report on Postal Definitions, ERGP PL II (20) 7 (2020); ERGP Report on Key Consumer Issues, ERGP PL II (20) 8 (2020); ERGP Opinion on the review of the regulatory framework for postal services, ERGP PL I (19) 12 (2019).



electronic communications, ensuring that all citizens have access to essential communication services. This principle aligns with the goals of the postal sector, where the preservation of universal service obligations is essential. These four issues seem to be common to postal and telecom markets. These four issues, common to both postal and telecom markets, underscore the interconnection of these industries. The new regulatory goals defined in the EECC regarding very high capacity networks, in particular, should be viewed as a transformative factor that can reshape the way postal services are delivered. As very high-capacity networks evolve and enable faster data transmission, the postal market may witness advancements in tracking and delivery services, further integrating electronic and physical communication channels.

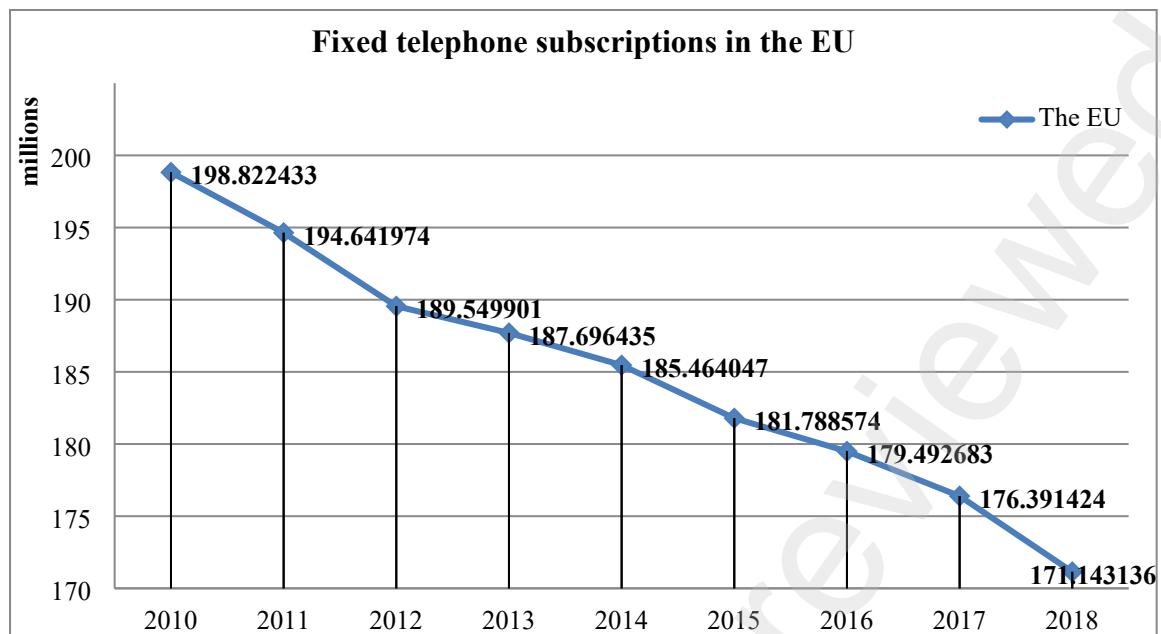
#### **a. The need for a change**

From the very beginning, the EU regulatory regime focused mainly on promoting competition and access to universal service. However, there was a need for modification in light of technological and market developments. Fig. 2 demonstrates the rapid decline of fixed-telephony subscribers in the EU.

On the telecommunication markets, as underlined in the EECC, one of the key technological changes is converting traditional analog telephone services to the voice communications service based on the internet protocol (IP) technology (recital 14 EECC). Such a change enabled end-users to choose between a range of competing voice service providers which offer functionally equivalent online services, such as Voice over IP. Thus, EECC states that the definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach (recital 15 EECC)<sup>15</sup>. This can be seen as one of the essential modifications in the EECC regulatory approach – the functional approach to several definitions. Such a change can accelerate market development, since operators will have more freedom to arrange their services instead of strict, technical regulations.

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<sup>15</sup> According to Article. 2.1 an electronic communications network means transmission systems, whether or not it is based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.



**Fig. 2 Fixed telephone subscriptions in the EU 2010-2018.**<sup>16</sup>

Access to a high-speed internet connection<sup>17</sup> in the EU has been included in the EECC as a central issue of the new regulatory approach. The EECC highlights that access to the internet is essential for economic and social development, participation in public life, social and territorial cohesion. Effective access must be provided to all EU citizens both indoors and outdoors, to the fastest broadband speeds of not less than 30 Mbps by 2020 (recital 109 EECC). Consequently, the EECC has reshaped regulatory principles by adding to the regulatory framework the connectivity objective besides the existing three primary goals: promoting competition, the internal market, and end-user interests. However, the connectivity objective, which is mainly focused on the development of very high capacity networks, seems to be the most prominent regulatory principle for the EU Member States, the national regulatory authorities, and other competent authorities. The EECC highlights several times that the connectivity objective now takes a leading place in the EU regulatory policy. An example of the above is that, according to the EECC, competition in the telecommunication

<sup>16</sup> Source: The World Bank (<https://data.worldbank.org/indicator/IT.MLT.MAIN?end=2018&locations=EU-1W&stArticle=2010&view=chArticle>) Fixed telephone subscriptions refers to the sum of active number of analogue fixed telephone lines, voice-over-IP (VoIP) subscriptions, fixed wireless local loop (WLL) subscriptions, ISDN voice-channel equivalents and fixed public payphones.

<sup>17</sup> The EECC defines a very high capacity network as either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point (Article. 2 p. 2).

market is described as the best tool to foster investment in new and existing telecom infrastructure (recital 27 EECC). The EECC determines four general objectives, and formally none of them has been given primacy: 1) Connectivity and access to, and take-up of, very high capacity networks; 2) competition, including efficient infrastructure-based competition; 3) development of the internal market, which means, for instance, removing obstacles for investment in electronic communications networks, and 4) promoting the interests of EU citizens, which means developing very high capacity networks. Three of them are focused on very high-capacity networks. Thus, very high capacity networks can be seen as the main focus of regulatory policy concerning telecom markets in the EU. The other goals seem to only be auxiliary objectives.

Hitherto, the NRAs' duty was to interfere in the economic decisions of the telecoms, mainly through *ex-ante* regulation, to safeguard effective competition on the market, or to establish competitive relations between the incumbents and the new entrants. The objectives of any *ex-ante* regulatory intervention by NRAs to the telecom market are ultimately to produce benefits for end-users in terms of price, quality, and choice. The novelty of the new EU regulatory framework is that the connectivity goal cannot be fulfilled only by the standard *ex-ante* regulatory toolbox and policies known from the previous frameworks.

#### **b. Very high capacity networks – a new regulatory obligation**

The development of very high-capacity networks appears to be a demanding issue for the NRAs and EU institutions such as the EC or BEREC. Moreover, as discussed above, this new issue is changing regulatory policy priorities on the telecom markets. The biggest question for the competent authorities is how to stimulate the market to transform the telecom infrastructure into very high-capacity networks. According to Nałęcz, such development needs a high level of financing activities from the market players i.e., telecom operators (A. Nałęcz, 2020). NRAs' new regulatory instruments are intended to promote the development of very high capacity networks, including that such development entails capital intensity from the investors. Therefore, only the biggest operators on the market, most likely possessing significant market power (SMP),<sup>18</sup> can efficiently invest in very high-capacity networks. In

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<sup>18</sup> SMP is defined in Article 63.2 EECC, and means that undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, namely a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

other words, can such a change be beneficial for SMP operators and induce them to invest in very high capacity networks? Nevertheless, it is a chance for less *ex-ante* regulation on the telecoms market.

### c. Promoting competition (*ex-ante* or *ex-post*)

In the past, telecommunication markets, like most networks industries, were national monopolies. The first step in creating a more competitive environment for the telecommunication market was the demonopolization of state-owned operators. At the same time, the demonopolization of the telecommunication industry needed a comprehensive approach, described as a liberalization and harmonization process. The liberalization of the telecommunication markets in the EU required policymakers to accept one of the possible (existing) legal remedies<sup>19</sup>. Thus, the legal remedy shall be understood as a corrective measure taken by public authority decisions or court orders following a finding that an undertaking had either engaged in an illegal abuse of market power<sup>20</sup> or was about to create market power (D. Geradin, and J.G. Sidak, 2003). Generally, legal remedies have a retrospective orientation, which means that a corrective measure is imposed on a subject (undertaking) only after illegal action has been done (*ex-post*). In contrast, legal remedies can have a prospective approach, which allows or even obligates imposing a remedy before any specific finding of illegal conduct (*ex-ante*). Antitrust regulations usually use *ex-post* remedies<sup>21</sup>, and *ex-ante* remedies are generally imposed through sector-specific regulations. In the EU, *ex-ante* remedies were chosen as the most appropriate to create competition in the telecommunication market (sector-specific regulation). This is due to the inability of antitrust regulations (*ex-post*) to create effective competition in the networks industries (for more detail, see: A. de Streel, 2008a or P. Buigues, 2006). Thus, *ex-ante* regulatory obligations should only be imposed where there is no effective competition, i.e., in markets where there are one or more undertakings with SMP, and where national and EU competition law remedies are not sufficient to address the problem. A. de Streel accurately points that:

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<sup>19</sup> For the competence of the EC to abolish all special rights in the telecommunication sector, see Joined Cases 188–190/80 *France, Italy and the UK v Commission* ([1982] ECR 2545) and also Case, C. 202/88 *French Republic v Commission of the European Communities* (Telecommunication Terminal Equipment)[1991] ECR I-1223 (1991).

<sup>20</sup> The EU competition rules laid down by Article 101 (concerted practices that restrict competition) and Article 102 (abuse of dominant position) of the Treaty on the Functioning of the European Union (TFEU) (formerly Articles 81 and 82 of the treaty establishing the European Community (EC Treaty)).

<sup>21</sup> Except for the merger control, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

"substantive differences between antitrust and sector regulations are that sector regulation mainly deals with unsatisfactory market structures whereas competition law deals with unsatisfactory firms' behaviours, (...)" (A. de Stree, 2008a, p. 70). To summarize, ex-ante regulation has been limited to the minimum necessity to meet regulatory policy objectives. This required establishing in the EU Member States a new type of authority responsible for sector-specific regulation for the telecommunication market - NRA<sup>22</sup>. Before the liberalization process, the incumbent performed the regulatory and operational functions. This was one of the major obstacles to introducing effective competition on the market.

A single EU regulatory authority for the telecommunication market was never established due to the lack of legal basis in the EU treaties and the political willingness of the Member States for such a regulator. Implementation of EU regulatory policy was always decentralized, with the specific power of the EC often described as a super-regulator (J. Scherer, 2002). Such a legal model for "imposing" competition on the telecom market has existed from the very beginning of the EU regulation for this market. As an effect of the foregoing regulatory policies, the telecom markets across the EU are now highly competitive. This is shown in the diagrams below (Figs. 3 A and B), where it is evident that average internet prices in the EU are much lower than in other highly competitive countries (South Korea, as the smallest country in the overview, is an exception). National markets now have several competing operators in most of the market segments. Undoubtedly, such a market condition is a superb achievement of the previous EU regulatory policy. However, the current market situation is much more complex. Thus, competition protection should now be accomplished by new regulatory tools that are more appropriate for the market.

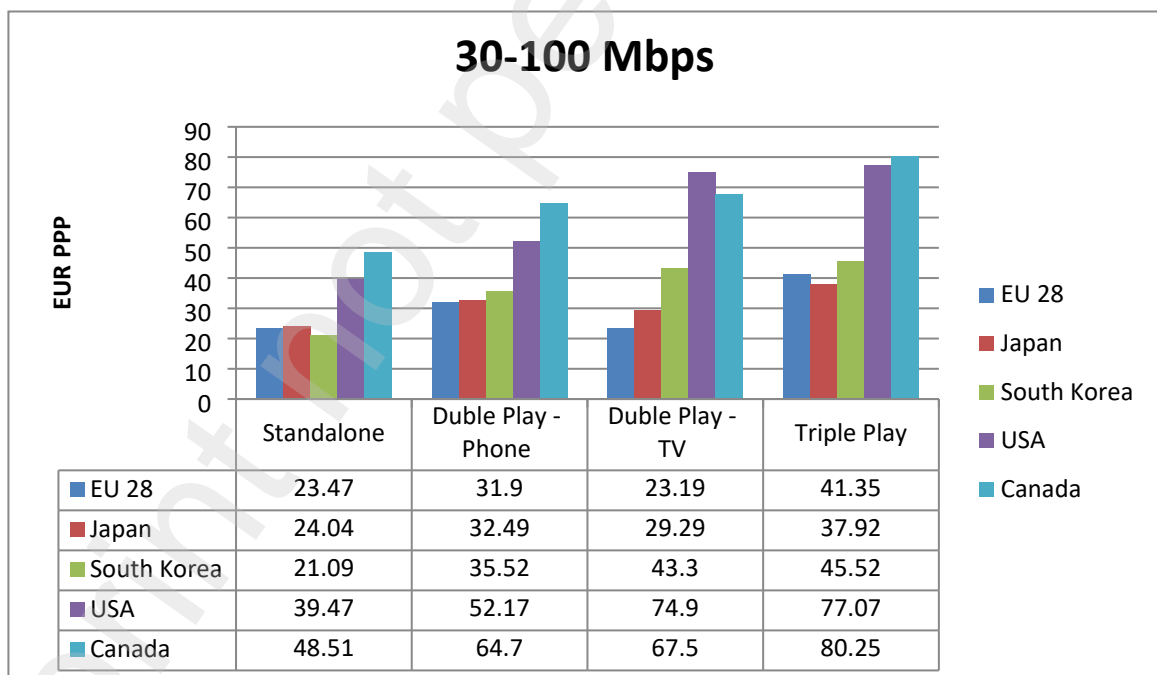
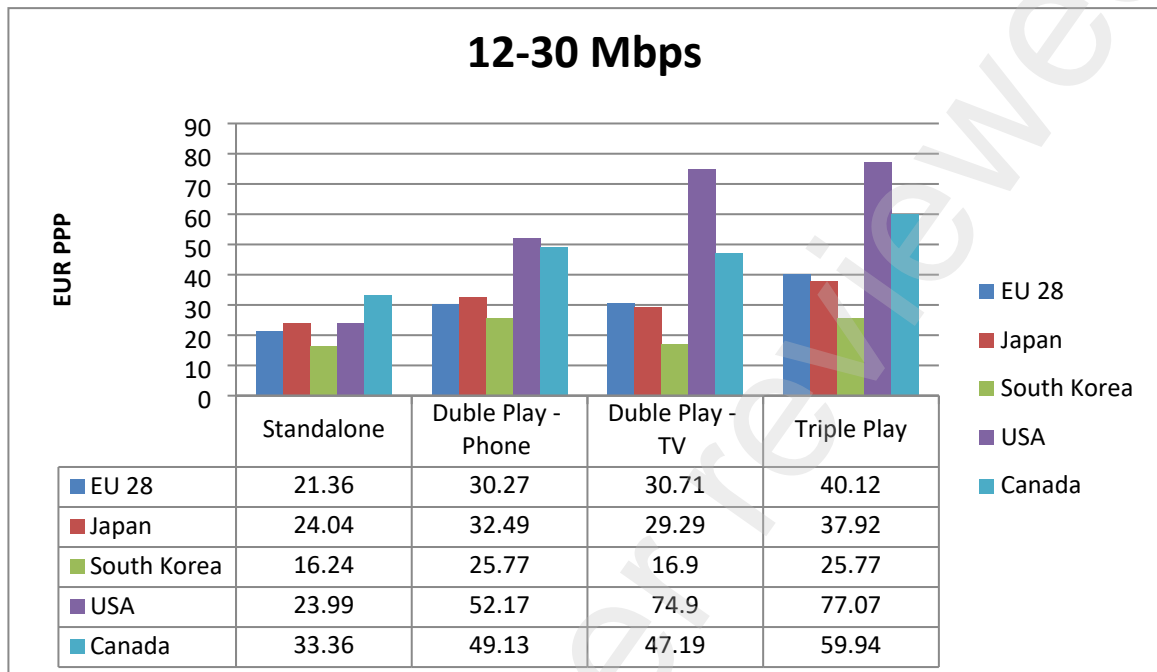
Effective competition in the telecom markets is still one of the key regulatory issues. Therefore, the EECC incorporated most of the pro-competition regulatory tools from the previous Framework Directive, i.e., the definition of SMP, the procedure for identifying and defining markets or imposition, amendment, or withdrawal of the regulatory obligations<sup>23</sup>. The general policy objective for the NRAs is to impose ex-ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-

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<sup>22</sup> For the first time, the definition of an NRA appeared in Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (Official Journal L 165, 19/06/1992 P. 0027–0036). According to this regulation, an NRA has been defined as: *the body or bodies in each Member State, legally distinct and functionally independent of the telecommunications organizations, entrusted by that Member State inter alia with the regulatory functions addressed in this Directive.*

<sup>23</sup> Articles 15-16 of the Framework Directive.

users and relax or lift such obligations as soon as that condition is fulfilled (Article 3.4 (f) EECC).



**Figs. 3 A and B. The EU 28's lowest prices compared to other countries (expressed in EUR/PPP, VAT included)<sup>24</sup>. These two charts show that the average prices in the EU are lower than in the selected highly developed countries.**

<sup>24</sup> Source: EC, Fixed Broadband Prices in Europe 2018.

#### d. Universal service

During the era of monopolies, public operators legally guaranteed telecommunication services for customers with social needs (e.g., disabled) or living in rural (peripheral) areas. Public operators, being monopolists, were able to subsidize the financial losses incurred by providing such services from the other profitable segments (cross subsidization). With the liberalization process, there were concerns that some customers would not be able to access telecommunication or postal services on a competitive market, or that the cost of services would be unaffordable. This was considered to be one of the negative consequences of the liberalization of the markets<sup>25</sup>. The reaction to this was to establish the universal service obligation (USO) which was to be provided by one or more telecoms operators in each EU Member State<sup>26</sup>. Universal service became part of the sector-specific regulation described as *social or economic regulation*. Thus, universal service is an essential part of the sector-specific regulation on each network industry. Moreover, access to their services has a civilizational aspect.

Universal service is part of the services of general economic interest (SGEI). There is no legal definition of the SGEI, but the EU legal documents highlight that the concept of SGEI designates "(...) universal service, continuity, quality of service, affordability, and user and consumer protection". SGEI is an "EU legal category that provides an exception to the competition rules for the proportionate pursuit of legitimate public interest goals by private undertakings" (Sauter, 2008, p. 1). The presence of the universal service on the infrastructural markets, like the postal sector, is the consequence of the liberalization process. As was mentioned, when state-owned public operators were monopolists, they were legally obliged to offer some categories of services. However, introducing free competition to the market raised concerns that some users could be excluded from access to some unprofitable postal services, or that such services could be unaffordable for users. Thus, the remedy for potential negative consequences was establishing the USO: "In a liberalized market environment, a universal

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<sup>25</sup> Towards a competitive Community-wide telecommunications market in 1992: implementing the Green Paper on the development of the common market for telecommunications services and equipment : state of discussions and proposals by the Commission; COM (88) 48 final.

<sup>26</sup> In most of the EU countries, there was USO and universal service provider, however, in Germany, there was no universal service obligation (Deutsche Telekom provided a service without any obligation). In Sweden there was a USO but there was no designated universal service provider.

services obligation guarantees that everybody has access to the service at an affordable price and that the service quality is maintained and, where necessary improved".<sup>27</sup>

Compared to other network markets, telecommunication universal service is subject to the quickest changes. This is due to the rapid technological evolution of this sector. Telephone boxes (telephone booths) are perhaps the best example of universal service's evolution, since they no longer pay for themselves but nevertheless they still survive as an iconic symbol in some countries. Previous EU regulations strictly regulated the scope of USO as a minimum set of services that must be made available for customers. According to these directives, universal service was made available at the quality specified to all end-users and at an affordable price. More and more countries decided not to designate a universal service provider in recent years because the market ensured universal service with no need for regulatory intervention (the first one was Germany). Therefore, designation of the USP was never a legal obligation in the Universal Service Directive 2002/22/EC.

As can be expected from a directive creating a new regulatory policy, the EECC contains numerous changes in universal service. Accordingly, in the EECC universal service must evolve to reflect advances in technology, market developments, and changes in user demand (recital 210 EECC). The increasing competition on the market and consumer choice for different sources of communications services was another factor that determined the need for modernization in universal service regulations. Thus, the EECC stipulates that affordable adequate broadband internet access is an essential part of USO, in addition to voice communications services (Article 84 EECC). Such access is now crucial for both society and the economy. A modern society like the EU is currently moving to the digital economy (A. Stavitsky et al., 2019, p. 257) and society living online. Member States may extend the scope of USO to end-users that are microenterprises and small and medium-sized enterprises, and not-for-profit organizations. This means that USO can now become more "universal", not only limited to customers with special needs. That must be seen as a proper step.

The issue of who should be a universal service provider has been left to the Member States. However, regulatory intervention and the designation of a universal service provider is an exception to be used only when the minimum set of universal service (availability at a fixed location of an adequate broadband internet access service and of voice communications services) cannot be ensured under normal commercial circumstances or through other

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<sup>27</sup> Green Paper on services of general interest COM(2003) 270 final, p.16.



potential public policy tools. In such a situation, Member States may designate one or more undertakings to guarantee such availability throughout the national territory. Thus, under normal commercial circumstances, the minimum set of universal services shall be provided by the market – and thus different telecoms operators.

The role of NRAs is still essential in ensuring and safeguarding USO. The scope of NRAs' responsibility is: a) monitoring the evolution and level of retail prices (Article 85 EECC); b) tariff options or packages to consumers with a low income or special social needs offered by undertakings (Article 85 EECC); c) calculating the net costs on the compensation request by providers of a broadband internet access service, voice communications services or the continuation of the existing universal service when such services place an unfair burden on providers (Article 89 EECC), and d) the management of the sharing mechanism if the net cost of USO is shared between providers of electronic communications networks and services (Article 90 EECC).

#### **4. Postal market**

The postal and delivery industry plays a significant role in the EU economy. This is proved by hard figures showing the number of employment positions, the postal operators' revenues, or the postal contribution in the GDP. Moreover, the extraordinary situation caused by the COVID-19 pandemic showed that the postal industry plays an indispensable role in every society, particularly during lockdowns (Chołodecki, 2023). The significance of this sector should be seen in its role in modern society. In these terms, the postal market continues to be significant in European social life. Hence, unlike any other network industry, the postal market is rapidly changing, adjusting to contemporary social and public needs.

The EU Member States' telecommunication markets are generally comparable, but each postal market remains distinct (not only in the EU). As a result, there are hardly two similar postal markets in the EU. This is one of the fundamental differences between these two network markets. Thus, the above suggests that forming the next regulatory framework for the EU postal market can be challenging. In light of this remark, further analysis of the EECC's impact on future postal regulation must be considered.

##### **a. The need for a change – the market transformation**

Two major trends currently occurring in the postal market, outside the scope of EU postal regulation, are digitalization and platformization. Digitalization is understood as the e-substitution of public services (e-administration)<sup>28</sup>, which causes a decline in letter volume but an increase in e-commerce and a rapidly growing parcel market. In business science, platforms are illustrated as providing the infrastructure and governance to facilitate interactions between autonomous agents. The role of platforms is to link agents on two or more market sides that directly determine the conditions of their interaction, maintaining residual control rights over their assets. Platforms, therefore, assume a mediator role, aiming to provide optimal matches between agents on both market sides, often through digital technologies (Julian R.K. Wichmann et al., 2022, p. 111). Thus, platformization is a business model associated with e-commerce that substantially impacts the postal market. For the postal market, platformization is an integrated business (ecosystem) with a digital marketplace, often offering its products and services. The problem for the postal market is that assets (goods) are delivered to customers directly throughout their distribution channels (e.g., by Amazon on the international level and locally by Allegro in Poland), omitting both couriers and postal operators. Hence, they fall outside the purview of postal regulation due to their non-conformance with the postal service definition. Platformization may also potentially pose a threat to competition.

Digitalization and platformization are the most important new challenges for the postal market. These trends directly affect users by changing their needs and expectations (M. Finger et al., 2005, p. 12, 23). The UPU acknowledges the importance of e-commerce for traditional postal operators' highlighting that "to succeed in the competitive field of e-commerce, Posts need to rapidly establish an integrated cross-border e-commerce ecosystem, which is to be provided by postal operators through physical e-commerce hubs interfaced with online e-commerce platforms. With e-commerce growth set to continue over the coming years, Posts should continue to play a vital role in the e-commerce market by leveraging their core competencies" (UPU, 2020, p. 24). However, it is unclear how the market (operators) will answer these expectations and how they will adapt to them. It can be assumed that the

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<sup>28</sup> The e-substitution is caused mainly by Regulation (EU) no 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS). The eIDAS provides e-administration for registered electronic delivery, allowing sending and receiving data that enjoy a legal presumption of its authenticity and integrity. This tool may be effectively used in courts and administrative proceedings. Such deliveries are analogous to those assigned to the delivery of traditional registered mail. Consequently, many EU countries have witnessed the expansion of IT systems, becoming a modern equivalent of a traditional postal service. However, from the postal law perspective, digitalization is not included in the EU postal regulation, i.e., it is not a part of the universal service obligation, which is based only on the traditional mail service.

traditional roles in the postal market performed by postal operators (incumbents) and courier operators are changing, and platforms like Amazon, Alibaba or Allegro will try to supersede them. There is no doubt that these trends will primarily affect not only incumbents - universal service providers predominantly active on the traditional segments of the market, like letters. Therefore, this ongoing transformation must be included in the future EU regulatory framework.

A good example of a new international regulation accommodating the postal market for e-substitution is this adopted by the Universal Postal Union (UPU)<sup>29</sup>. In 2016 at the 26th UPU Congress a new type of postal service was added - electronic postal services, which comprise: electronic postal mail, electronic postal registered mail, electronic postal certification mark, and electronic postal mailbox (Article 17 of the UPU Convention). They are the digital equivalent of the traditional postal services. This part of the UPU Convention is not a mandatory element for the member countries' regulation, but it shows an ongoing trend. Digital communications are increasingly common alternatives for traditional letters, now for the older generations too. At the same time, universal service providers cannot close down the postal letter segment just like that, nevertheless it is shrinking overall.

The literature consensus is that the postal regulatory framework needs to be changed (i.e., S. Romito et al., 2020; Hearn, 2020; Gori et Parcu, 2020, or Chołodecki, 2020). Without a suitable regulatory response, current legal institutions like the USO will lose their significance for users and can become more expensive for providers. Therefore, the EECC must be seen as a legal framework for adjusting regulatory institutions and their toolbox to new challenges in the telecommunication market.

#### **b. The shape of the Universal Postal Service**

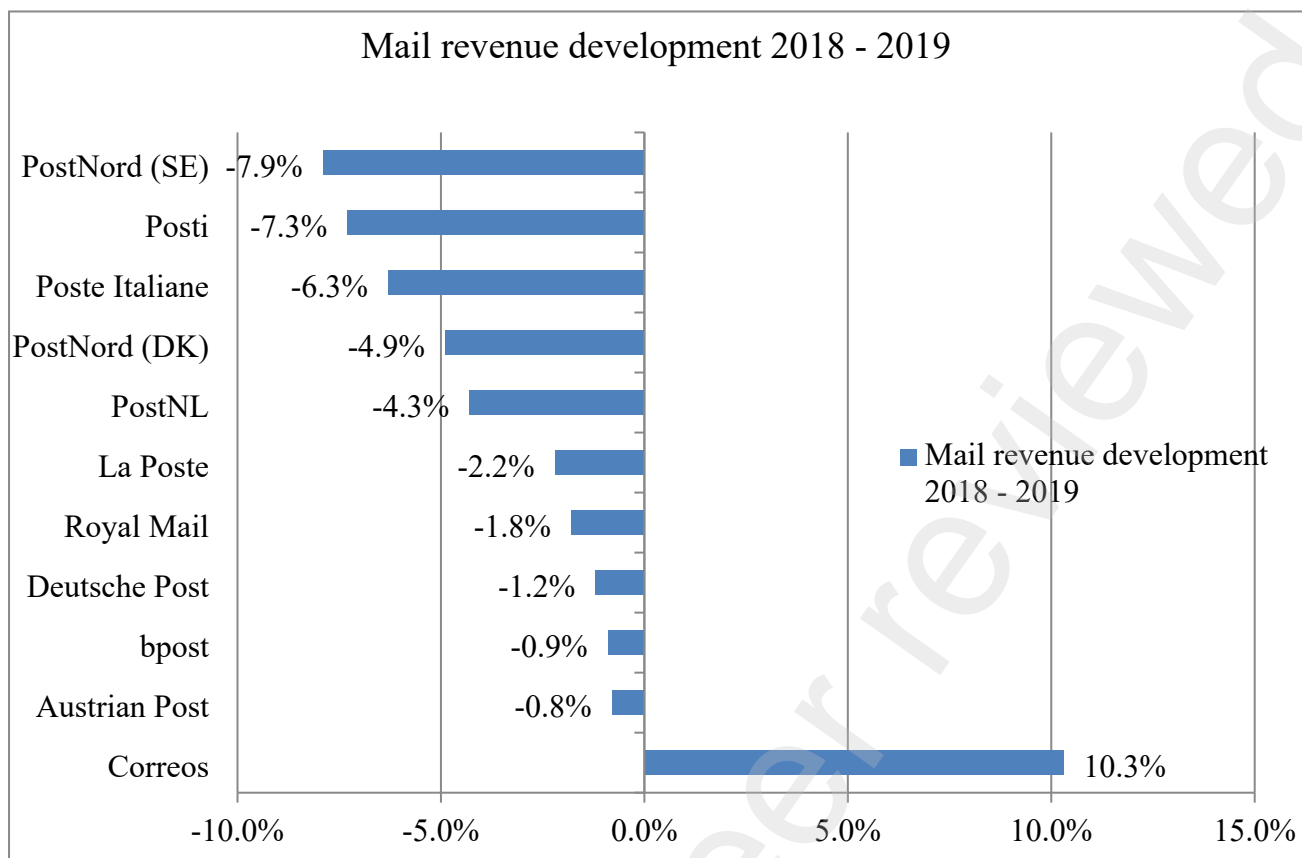
It is no exaggeration to assert that the universal postal service is an essential part of the EU sector-specific regulation. As a result, the main regulatory goal of the NRA is safeguarding the universal service. Safeguarding the right to universal service for all users is an obligation of all the EU Member States (Article 3 Postal Directive). Currently, the biggest obstacle of the USO is excessively detailed EU regulations. USO comprises the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users (Article 3.1 Postal Directive). Furthermore, the universal service must be

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<sup>29</sup> The Universal Postal Union is a United Nations specialized agency and the postal sector's primary forum for international cooperation.

guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and it includes as a minimum: one clearance and one delivery to the home, premises, or one delivery to appropriate installations (Article 3.3 Postal Directive). Given the decline in the letter market and concerns about price affordability, the USO can potentially incur significant costs (Chołodecki, 2020). However, it should not be automatically assumed (per se) that the USO constitutes a financial burden (Bergqvist, 2023, p. 13).

As mentioned above, postal markets in the EU Member States differ from each other significantly. This difference has several grounds. First of all, every postal market has its historical background and unique development path. Factors such as the size of the country, population density, the character of the landscape, the scale of urbanization, users' expectations, and citizens' wealth. All these factors have shaped postal markets. Therefore, it is even hard to categorize (or group) EU postal markets to make some simplifications. As is shown in Fig. 4, revenue from mail can vary significantly between some of the presented USPs. Finally, like every element of the postal market, universal service is subject to rapid technological changes. Thus, these factors should strongly indicate future USO regulations'.



**Fig. 4 Mail revenue development 2018 – 2019<sup>30</sup>.**

Like in the EECC, universal postal service must evolve to reflect advances in technology, market developments, and changes in user demand. The growing competition from the alternative postal operators (couriers) is an additional factor for the modernization of universal service regulations. Thus, the current shape of the universal postal service should be changed. The EECC implies that universal service will be an important element of the next EU regulation, with the SGEI core elements, like being available at the quality specified to all end-users and at an affordable price. The designation of a universal service provider should be an option reserved for NRAs. This is an opportunity especially for smaller countries with advanced digitalization processes. On the telecoms market, the designation of the USP was never a legal obligation, and in some EU Member States, the market is providing universal service with no need for regulatory intervention.

<sup>30</sup> Source: PostNL, *European Postal Markets 2021 an overview*, p.21. The difference between 2018 and 2019 mail revenues in local currency. The revenues include domestic and cross border activities. PostNL 2019 revenue includes Sandd revenue as from 1-10-2019.

The digitalization process described above leads to the digital economy and society living online; that is why governments are trying to provide public services in a digitalized form (P. Gori & P. L. Parcu, 2020). The "cost-saving potential for senders" and "the convenience to access, save, and store communication" (Copenhagen Economics, 2018, p. 36) are also important factors for digitalization. Therefore, the universality of universal service requires adding digital services to the USO, as UPU recommends. Romito and co-authors accurately pointed out that "The Incumbent Postal Operator could become the "link" between the communication and delivery markets that are being heavily impacted by digitalization, and physical communication has been more and more displaced by digital communication, while the delivery market has experienced an enhanced role due to digitalization" (Romito et al., 2020, p. 61). The role of the postal NRAs should be essential in ensuring and safeguarding the USO on the postal market.

### **c. Competition and regulatory power**

The postal directives have provided limited sector-specific tools for NRAs to promote competition, primarily focusing on regulating narrow access to postal infrastructure, as outlined in Article 11a of the Postal Directive. In place of dedicated sector-specific tools, the postal directive have instituted accounting and cost allocation measures aimed at mitigating anti-competitive cross-subsidization by incumbent postal providers. In response to the shifting competitive dynamics in the postal sector, significant legal precedents have emerged, notably in the EU courts<sup>31</sup>. Among these, the rulings by the European Court of Justice in the *Post Danmark I*<sup>32</sup> and *Post Danmark II*<sup>33</sup> cases stand out. These rulings introduced anti-competitive measures (address the criteria governing rebates offered by dominant undertakings) aimed at former state monopolies such as Post Denmark. However, it is crucial to note that the market conditions that prompted these cases have evolved significantly over time. In a notable development, Denmark, at the forefront of the letter market decline in Europe, is poised to relinquish its USP designation starting in 2023. This transition signifies a shift towards market-driven fulfilment of the USO.

As a result, the liberalization process of the EU postal market has been limited to lifting the legal monopoly and other market restrictions. To present possible changes in the

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<sup>31</sup> Case C-399/08 *Commission v Deutsche Post* judgment of 2 September 2010 (*Deutsche Post I*) or case C-293/15 *Slovenská pošta v Commission* judgement 30 June 2016.

<sup>32</sup> Case C-209/10, *Post Danmark A/S v Konkurrencerådet*, judgment of 27 March 2012 (*Post Danmark I*).

<sup>33</sup> Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, judgment of 6 October 2015 (*Post Danmark II*).

EU postal framework, we need to make a simplified characterization of NRAs' existing regulatory toolbox. Thus, the EU postal markets consist of two major segments:

- Traditional (mail) – it is highly regulated with a USO as the central element of the segment. Competition faces limitations primarily due to economic barriers like entry costs and the ongoing decline in letter volumes, driven by the structure of the USO dedicated to maintaining universal service. Additionally, the digitalization trend is impacting this segment in several countries. Consequently, the majority of NRA regulatory power and responsibility are directed toward this segment, characterized by social regulation aimed at safeguarding the USO.
- Alternative (CEP) – it is a free market with very strong competition. Almost complete absence of any regulatory power from the NRA. The segment is focused on the e-commerce parcel market. The out-of-home delivery infrastructure like parcel lockers is another distinctive element of this market. In addition, the platformization trend impacts this segment.

Some European postal undertakings, such as German Deutsche Post, UK Royal Mail, or French La Poste, operate in both segments of the postal market. However, they often establish or acquire separate companies (such as DH, GLS, and DPD) to operate in the alternative segment. This strategic move is often undertaken to alleviate the regulatory measures that could affect their status as USPs, as mandated by postal regulations. In essence, when a single corporation participates in both postal segments, it adheres to different rules and adopts distinct business models for each<sup>34</sup>.

In this section of the study, we aim to understand why competition has been absent in the traditional postal market while flourishing in the alternative segment. The possible answer can be obtained by noticing the telecommunication market and the foundation concepts of liberalization of this market. From the very beginning, the transformation of the telecommunication markets requires a specific legal apparatus necessary to achieve effective competition – sector-specific regulation with *ex-ante* obligation as a part of the NRA legal toolbox. Notably, in most EU Member States, this policy seems effective since the telecommunication markets are highly competitive and the market provides even universal service with no need for regulatory intervention. This raises the question of future policy for both segments of the postal market. *Ex-ante* obligations can only achieve effective

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<sup>34</sup> An example from a non-EU country is the Swiss Post, the postal incumbent in Switzerland, which has a strong position in both market segments.

competition on the infrastructural markets like the postal market, i.e., access to the crucial elements of the infrastructure. According to the EECC, "access" means the making available of facilities or services to another undertaking, under defined conditions, to provide electronic communications services; it covers, among other things: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts, and masts (Article 2.27 EECC). The telecommunication NRA may impose obligations on undertakings to meet reasonable requests for access to, and use of, specific network elements and associated facilities in situations where denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest (Article 73.1 EECC). Thus, the EECC does not limit access to any telecom infrastructure elements and does not exclude any undertakings to gain such access. In contrast, the postal directive grants non-discriminatory access to elements of postal infrastructure or services provided within the scope of the universal service. This access is limited to the postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service, and return to sender service (Article 11a Postal Directive). However, this access is strictly connected to the USO. Therefore, the access defined by the postal market is more like a prosthesis rather than an effective pro-competitive tool.

Since liberalization began with postal directive 97/67/EC, the subsequent postal regulations followed the telecommunication framework. The EECC suggests that the following postal regulatory framework may possibly be equipped with a pro-competitive sector-specific regulation similar to the telecommunication framework. Both described segments of the postal market need pro-competitive regulations. The traditional segment needs effective competition, especially through allowing access to incumbents' infrastructure, and the alternative segment needs to be able to access competitors' out-of-home delivery (OOH) infrastructure. Sector-specific regulation could serve as a valuable means to achieve these objectives within the postal market<sup>35</sup>.

#### **d. CEP as postal service**

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<sup>35</sup> Contrary arguments has been presented F. Russo at al. (2023).



The value of online sales in the EU doubled between 2012 and 2017, from €121 bn to €224 bn<sup>36</sup>. Consequently, the Courier, Express and Parcel (CEP) industry, which delivers e-commerce goods, is also growing. The constant growth of e-commerce is now a key factor for the EU postal market. However, delivering parcels requires different infrastructural solutions from distribution centers, due to the greater variety of parcel sizes and shapes, and necessitates the adoption of different delivery solutions, like OOH. In all the EU Member States, OOH infrastructure is rapidly developing. The significance can be demonstrated by the number of parcel machines in Poland (11,000), Spain (10,000) and Germany (7,000). Nevertheless, the pick-up and drop-off (PUDO) points have reached the following numbers in Germany (57,000), France (45,000), UK (38,000), and Italy (36,000)<sup>37</sup>.

Due to technological development and consumer expectations, the telecom regulation evolved from (focusing on) fixed-telephony to high-speed internet access. The postal market is facing comparable evolution from the letter market to CEP. This evolution needs an appropriate response. Therefore, the EECC made some of the crucial definitions in line with a more functional approach rather than a technical one, i.e., the definition of electronic communications services (recital 15 EECC). This is one of the essential modifications in the EECC regulatory approach.

Following the EECC changes to the regulatory framework, it can be assumed that certain postal definitions will be changed, and new ones will emerge. This is because the CEP market needs new definitions to compose a comprehensive framework. OOH and PUDO need to be defined, with parcel lockers as an element of postal infrastructure. In addition, the platformization of the market must be taken into account to protect consumers. UPU pointed out that “the use of postal service assets for new services generated by digital development requires a redefinition of the relevant market, where “universal service” encompasses not only traditional letter mail, but also digital communications and e-commerce packets.” (D. N. Corredera, T. B. Leta, 2019, p. 127).

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<sup>36</sup> Commission Staff Working Documents, European retail sector fit for the 21st century, SWD(2018) 236 final.

<sup>37</sup> "Last Mile Experts, *Out-Of-Home Delivery in Europe 2021*.

## 5. Conclusions

In summary, this research highlights the evolving landscape of postal regulation in the EU, drawing parallels with the dynamic telecommunications sector. The introduction of the EECC serves as a critical indicator for the future direction of postal service regulation. The EECC's objectives, emphasizing very high-capacity networks, signal a shift in regulatory priorities in the telecommunications market. This shift has implications for postal service regulation in three main areas: 1) USO: The traditional concept of USO, while important, should become more adaptable to local demands and less detailed at the EU regulatory level. Flexibility in USO design can better accommodate changing postal market dynamics. 2) Competitive Framework: Sector-specific regulation at the NRA level should be enhanced to provide effective tools for intervention. Special emphasis should be placed on to ensure fair competition across postal market segments. 3) Competitive Framework: Sector-specific regulation at the National Regulatory Authority (NRA) level should be enhanced to provide effective tools for intervention. Special emphasis should be placed on regulations addressing SMP to ensure fair competition across postal market segments. In moving forward, the new postal regulatory framework should adopt a more market-oriented approach, unifying both postal market segments under a consistent regulatory regime. Introducing pro-competitive measures (ex-ante) within the NRA's toolkit is crucial. Out-of-Home (OOH) delivery points, such as parcel lockers, should be treated as integral parts of the postal network. Failure to adapt the regulatory framework risks creating market imbalances favoring new entrants, notably e-commerce platforms.

While the nature of postal services has evolved, they remain essential arteries of global commerce, now facilitating the movement of goods rather than information in the form of letters. The regulatory landscape must evolve to support this transformation effectively.

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# **The Future EU Postal Regulation.**

## **What Can Be Learnt from the Telecommunication Regulations**

### **Abstract**

Postal and telecommunication markets are part of the network industry, regulated by specific regimes. After a long period of legal monopoly, the telecommunication market was fully liberalized before the postal one. Thus, the telecommunication regulatory framework has always been a pattern for the postal market in the EU. These two markets constantly develop in the fast-changing technological environment and shifting customer demands. The paper deals with the regulatory challenges of the EU postal market in light of the recently adopted telecommunication regulation - the EU Directive 2018/1972 establishing the European Electronic Communications Code. The directive has set new regulatory goals changing them to focus on high-speed internet connectivity and a more consumer-oriented market. The current postal regulatory framework has achieved all its goals and needs new ones to adjust the market to contemporary challenges. First, the paper critically analyzes the current EU regulatory framework in the postal market. Then, it proposes a new regulatory model considering market needs like mail-oriented universal postal service, fast-growing e-commerce, and the competition from new entrants.

**Keywords:** postal regulation, telecommunication regulation, European Electronic Communication Code, e-commerce, regulatory model,

### **1. Introduction**

The postal and telecommunication sectors are parts of the same family – described as a network industry under specific regulatory regimes. In an allegorical comparison, the postal sector is like the older sister for the telecommunication sector. Nevertheless, these siblings certainly play a unique role in one another's lives. Over recent years, the shape of these two markets has constantly been changing, irrespective of countries' regulations and policies. Technological telecommunication and electronic communication developments have

significantly impacted the postal market, especially in the form of e-commerce, platformization or new e-government services (the digitalization). This development has caused dynamic structural changes that are associated with two modern business trends: a sizable decrease in the revenue and volumes of traditional letter services (which used to be the core postal business), and dynamic growth of courier items (D. Coen and A. Hérítier, 2005, p. 21). The COVID-19 pandemic only accelerated this inevitable tendency (M. Chołodecki, 2023, p. 256). Recent developments triggered a discussion about the legal framework of the EU postal market. Therefore, in 2019, the EU Commission announced a consultation for the new directive on the postal regulatory framework. Similar processes caused by technological development and a new consumer approach to telecommunication services led to the adoption of the new EU Directive 2018/1972 of 11 December 2018 establishing the European Electronic Communications Code (EECC),<sup>1</sup> which the EU Member States were obliged to implement by the end of 2020<sup>2</sup>. The new Code represents the first complete overhaul of the EU regulatory framework for the telecommunications market since 2002. The EECC changes some of the telecommunications market's regulatory principles to adjust this sector to the new times and social demands.

Telecommunication regulation has always been a reference point for postal regulation. Despite all the differences, the EU telecom policy has always been one step ahead of the postal regulation. Thus, the newest telecommunication regulation - the EECC - should be seen as a vital sign for future postal service regulation. The development of the postal sector causes new problems to arise that require new regulatory approaches. The postal sector's development causes new problems that require new regulatory approaches. Therefore, the paper aims to reflect on the potential regulatory model for the EU postal market and the possible regulatory objectives. The more immediate aim is to understand why competition hardly exists in the traditional segment of the postal market and why it blooms on to the alternative one. Additionally, the paper discusses the possible effect of the EECC on the forthcoming EU postal regulation. Thus, the paper undertakes a critical investigation of the current regulatory framework of the EU postal market in light of the EECC.

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<sup>1</sup> Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast)Text with EEA relevance, OJ L 321, 17.12.2018, p. 36–214.

<sup>2</sup> However, some EU Member States have still not implemented all the EECC legal solutions to national legislation.



Section 2 presents the regulatory development of the two considered markets. Section 3 focuses on the most significant changes introduced by the EECC to the telecommunication regulatory framework that could have an impact on the postal market regulation. Section 4 discusses the current situation in the postal market with a critical investigation of the regulatory framework. The postal framework's three main elements, the Universal Service Obligation (USO), competition and regulatory power, and the Courier, Express and Parcel Services (CEP) segment are discussed. Finally, section 5 concludes the paper. The conclusions may provide valuable lessons for the future policy design of the postal markets in the EU and the optimal policy design of pro-market policies.

## **2. From the state monopolies to liberalized markets in the EU**

The postal and telecom markets are part of the network industries (J. Soares, J. Confraria, et al., 2002, p. 159). These two markets form the communication sector, which is fundamental to modern societies. In Europe, these sectors were characterized by monopoly (legal) and public ownership until the end of the 20th century. The monopolized postal and telecom markets usually contained one state-owned operator. These operators were often part of the public administration with special exclusive rights on the market (W. Hulsink, 2012, p. 5). As a result, the same operator offered postal and telecom services. In the last three decades, such a situation was put into question. Finally, the liberalization process removed the entry barriers from the markets at the end of the 20th century. The telecom sector was one of the first to be liberalized, and the postal sector was one of the last ones.

In terms of technological and consumer expectations, these two sectors have undergone a comparable change in the past 30 years. The telecom sector has been transformed from analog transmission to digital; from providing fixed telephony to internet access and mobile telephony (M. Cave, Ch. Genakos, et al., 2019, p. 48). The postal market has changed from delivering traditional mail (letters) to delivering parcels, from the postal operators being an “analog connector” between citizens and the government to a digital public e-service provider. After nearly thirty years of separation, these two markets are coming closer to each other (P. Gori and P. L. Parcu, 2020, p. 1-12). This rapprochement is now technical, since some of the same infrastructure is used to perform their service; thus, it is not only formal, i.e., grouped in the same public unit as it used to be. However, a significant distinction lies in the fundamental nature of these transformations. The telecom sector's evolution primarily

relies on technology, where automation and digitization have resolved bottlenecks and reduced labour-intensive processes. In contrast, the postal sector, particularly in the distribution phase (last-mile delivery) remains labour-intensive and consequently more expensive. This distinction underscores a crucial factor shaping these markets. Moreover, recent innovations in the postal sector, such as out-of-home delivery points like parcel lockers, have begun to address this labour-intensive aspect, introducing technological efficiencies. This blend of technology and labour remains a defining characteristic of the postal market, differentiating it from the telecom sector.

It is essential for this study to recognize that the regulatory approach adopted for the EU telecommunications markets serves more as a model than as a direct pattern for postal regulation. These sectors' unique characteristics, particularly regarding technology and labor reliance, necessitate distinct regulatory strategies, even as they draw closer together in the digital age.

#### **a. Telecommunication market**

The process of full liberalizing telecoms in the EU was similar to that in the US (V. Mayer-Schönberger, M Strasser, 1999, p. 572). The European Commission (EC) initiated the process of liberalizing the telecommunication markets by issuing the Green Paper on the Development of a Common Market for Telecommunications Service and Equipment in 1987 (R. Klotz, 2009, p. 56-58)<sup>3</sup>. From the very beginning, the EU regulatory approach to the telecommunication market was based on establishing free competition on the market. The liberalization of the telecommunication market shifted all legal barriers to entering the market. With this process, sector-specific regulation was introduced. At the outset, the EU lawmakers assumed that competition law could not solve the market's structural obstacles, such as access to the essential facilities owned by the former monopolist. Sector-specific regulation gives the possibility to impose an *ex-ante* obligation, i.e., cost-oriented access to essential facilities. This regulation is described as pro-competitive (A. Pera, A. Pezza, 2016) since it provides a legal toolbox for creating an environment that allows new entrants to enter the market. The application of sector-specific regulation requires a special regulatory body, independent from market players and the government (as long as the state owns telecommunication operators).

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<sup>3</sup> Towards A Dynamic European Economy, Green Paper on the Development of a Common Market for Telecommunications Service and Equipment; COM (1987) 290 final.

The next significant breakthrough legislation was the previous regulatory framework from 2002.

The 2002 regulatory framework for the EU telecommunication markets consisted of a set of directives: a common framework directive and four specific directives covering different issues: access and interconnection, authorization of electronic communications networks, universal services, and privacy directives<sup>4</sup>. In contrast, in the new framework the traditional term ‘telecommunication’ has been replaced by the new term ‘electronic communications’. There are two cornerstone goals of this regulatory framework: the promotion of competition and access to universal telecommunication services. Market regulation is the instrument for ensuring effective competition on the market by granting alternative operators access to the existing incumbents' networks and services under fair and non-discriminatory conditions (R. Klotz, 2009, p. 89). Universal service is safeguarded by the regulatory measures as well. The accomplishment of these goals required the creation of a harmonized enforcement practice within the EU by the National Regulatory Authorities (NRAs) and the EU Commission. The Telecoms Package only introduced minor reforms to the regulatory framework in 2009<sup>5</sup>. The reform focused mainly on an open internet, a single European telecoms market, and high-speed internet connections for all citizens. Nevertheless, the two main regulatory goals, i.e., promoting competition and universal service, did not change. Additionally, the Telecoms Package created the Body of European Regulators for Electronic Communications (BEREC)<sup>6</sup> as an advisory group consisting of NRAs and EU commission staff<sup>7</sup>. The establishment of BEREC was a step towards an internal telecom

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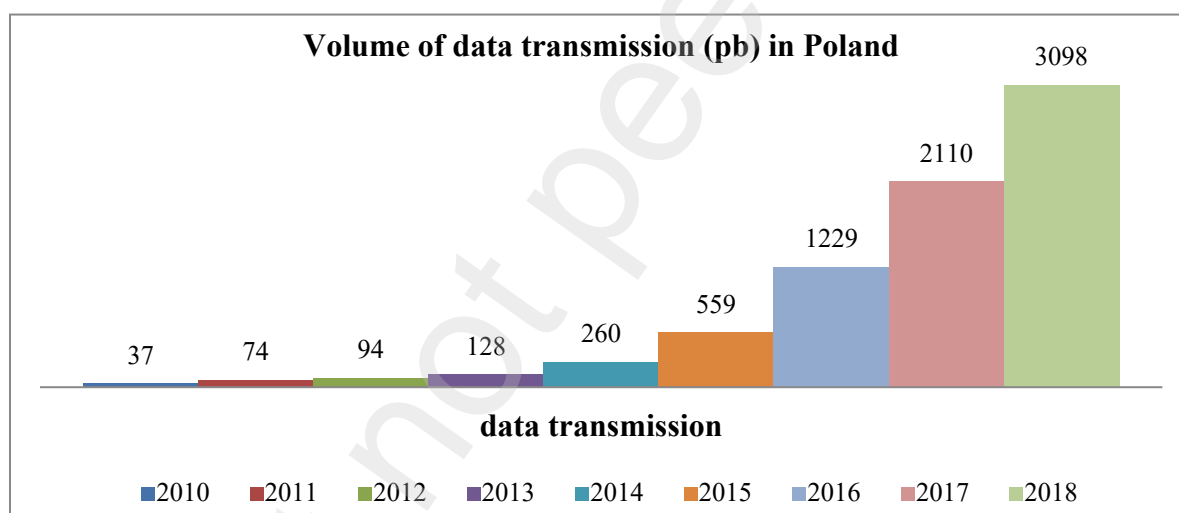
<sup>4</sup> Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ L 108, 24.4.2002, p. 7); Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorization of electronic communications networks and services (Authorization Directive) (OJ L 108, 24.4.2002, p. 21); Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ L 108, 24.4.2002, p. 33); Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, 24.4.2002, p. 51); Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).

<sup>5</sup> Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (OJ L 321, 17.12.2018, p. 1–35).

<sup>6</sup> Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (OJ L 337, 18.12.2009, p. 37–69).

market in the EU but still with the leading role of the Member States and NRAs in the regulatory functions (G. Monti, 2008). In such a regulatory environment, the EU Commission began to perform the function of a supreme regulator or the regulator of regulators (J. Worthy, R. Kariyawasam, 1998). A common model in the other regulated network markets. Nevertheless, the 2002 regulatory framework was under-criticized mainly due to the lack of regulatory vision of the market (P. Larouche, 2003; A. de Streel, 2008 and Ch. Hocepiet, A. de Streel, 2005). However, the main regulatory goals were generally fulfilled<sup>8</sup>, and the telecommunication market has changed fundamentally from the time the liberalization agenda was adopted (W. H. Melody, 2012, p. 232).

The shift in Poland's volume of data transmission (pb), presented in Fig. 1, could be a good example of the EU effect of the regulatory policy and mobile users' habits caused by technological changes. Such changes indicate that the telecoms market in the EU has been changing incredibly quickly.



**Fig. 1 Volume of data transmission (pb) in Poland 2010-2018<sup>9</sup>.**

### **b. Postal market**

There is no doubt that the postal service plays a vital role in each society, as an essential instrument of communication and trade. However, before the liberalization process began in

<sup>7</sup> For more about the evolution of the EU regulatory body for telecommunication market, see: M. Thatcher, D. Coen, *Reshaping European regulatory space: An evolutionary analysis*, "West European Politics" 2008, vol. 31, Issue 4.

<sup>8</sup> EU Commission, Implementation of the EU regulatory framework for electronic communication – 2015, Brussels, 19.6.2015, SWD(2015) 126 final.

<sup>9</sup> Source Report on the state of the telecommunications market in Poland in 2018, UKE.

Europe, most postal operators were part of the public administration, performing various public duties as a special link between the state (government) and citizens. As a result, the postal service was associated with the state. Thus, postal legislation used to be focused on the state-owned postal operator, which performed special duties and obligations assigned to them by the state (public services).

The recent development of postal services triggered a discussion about the legal framework of the postal markets in the EU, i.e., in terms of the exclusive rights of the incumbent postal operators. Consequently, on 11 June 1992, the Commission presented a Green Paper on the development of the single market for postal services and, on 2 June 1993, a Communication on the guidelines for the development of Community postal services. Therefore, at the end of the 20th century, some EU countries liberalized their postal markets, such as Sweden, which fully opened its market in 1993 (M.A. Crew and P.R. Kleindorfer, 2008, p. 3). In the next step, the EU adopted the Postal Services Directive 97/67/EC of 15 December 1997<sup>10</sup>, which established the first regulatory framework for the European postal services. Market liberalization and a universal service obligation were the major components of the directive (M. Chołodecki and B. Popowska, 2018, p. 8-9). In addition, the directive emphasized that the liberalization of the market must be carried out to secure a proper balance and guarantee the rights of the universal service providers (H. Cremer et al., 2008, p. 23). The directive was amended twice by Directive 2002/39/EC<sup>11</sup> and Directive 2008/6/EC<sup>12</sup> (the so-called 3rd Postal Directive). The 3rd Postal Directive introduced the legal basis for accomplishing the internal market for the postal services by providing the last legislative step in the process of gradual market opening. However, most Western EU countries fully implemented the EU postal regulations before the 3rd Postal Directive was introduced. As a result, by 2008, their postal markets had already passed the structural transformation process (A. Pimenta and A.M. Amaral, 2011, p. 61-62). There were two main objectives of the postal directives: liberalization of the market and safeguarding the kind of services that led to establishing the USO. Both of these objectives have been achieved (Hearn, 2020). Such a situation indicates the need for evaluating the postal framework and the establishment of new

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<sup>10</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 L 15, 21.1.1998, p. 14–25.

<sup>11</sup> Directive 2002/39/EC of the European Parliament and of the Council of 10 June 2002 amending Directive 97/67/EC with regard to the further opening to competition of Community postal services, OJ L 176, 5.7.2002, p. 21–25.

<sup>12</sup> Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67/EC with regard to the full accomplishment of the internal market of Community postal services, OJ L 52, 27.2.2008, p. 3–20.

regulatory goals that will recognize and effectively address the evolving dynamics in the postal market. This includes considerations for the parcel market, integration of parcel lockers as an integral component of the postal infrastructure, and other pertinent factors<sup>13</sup>.

As mentioned above, there are notable differences in the regulatory approaches to the telecom and postal markets. The most significant one is the different strategies safeguarding effective competition in the markets. In particular, there is an almost complete absence of pro-competitive sector-specific regulation on the postal market. Postal NRAs are not equipped in the *ex-ante* regulatory toolbox. Thus, ensuring competition in the postal market is not a goal of the regulatory framework. Instead, the EU lawmakers have limited the Postal Directives to just shifting all the legal barriers to entering the market. Protection of the Universal Service Provider (USP) caused the existence of two main segments of the postal market traditional letter markets operated by the incumbents and courier operators focused on e-commerce with strong competition.

### **3. European Electronic Communications Code**

The 2002 regulatory regime for electronic communications, composed of five separate directives, was replaced in 2018 by the EECC. This chapter is intended to demonstrate the essential issues that will most probably impact the future postal regulation in the EU, particularly with regard to the convergence of the postal and telecommunications sectors: a) The need for a change – from fixed-telephony to the internet. The increasing reliance on digital communication may lead to a decrease in traditional postal volumes, prompting postal operators to adapt to changing customer preferences. b) Very high capacity networks – a new regulatory obligation. This goal has implications for the postal industry, as it can enhance the efficiency of parcel delivery services and support the growth of e-commerce, which relies heavily on both high-speed internet and effective postal networks. c) Promoting competition and d) Universal service – The EECC maintains a commitment to universal service in electronic communications, ensuring that all citizens have access to essential communication services. This principle aligns with the goals of the postal sector, where the preservation of

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<sup>13</sup> See the documents prepared by the European Regulators Group for Postal Services (ERGP): Response to the Public Consultation on the PSD Evaluation, ERGP PL (20) 27 (2020); ERGP Response to the Digital Services Act (DSA) Public consultation, ERGP (20) 16 (2020); ERGP Report on Postal Definitions, ERGP PL II (20) 7 (2020); ERGP Report on Key Consumer Issues, ERGP PL II (20) 8 (2020); ERGP Opinion on the review of the regulatory framework for postal services, ERGP PL I (19) 12 (2019).

universal service obligations is essential. These four issues seem to be common to postal and telecom markets. These four issues, common to both postal and telecom markets, underscore the interconnection of these industries. The new regulatory goals defined in the EECC regarding very high capacity networks, in particular, should be viewed as a transformative factor that can reshape the way postal services are delivered. As very high-capacity networks evolve and enable faster data transmission, the postal market may witness advancements in tracking and delivery services, further integrating electronic and physical communication channels.

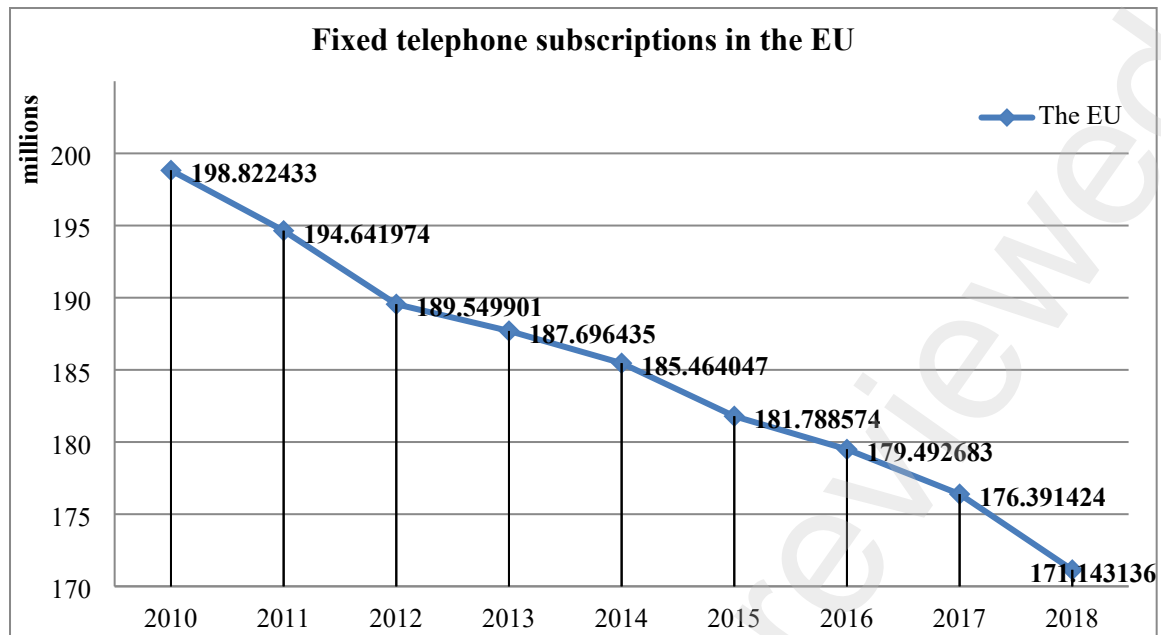
#### **a. The need for a change**

From the very beginning, the EU regulatory regime focused mainly on promoting competition and access to universal service. However, there was a need for modification in light of technological and market developments. Fig. 2 demonstrates the rapid decline of fixed-telephony subscribers in the EU.

On the telecommunication markets, as underlined in the EECC, one of the key technological changes is converting traditional analog telephone services to the voice communications service based on the internet protocol (IP) technology (recital 14 EECC). Such a change enabled end-users to choose between a range of competing voice service providers which offer functionally equivalent online services, such as Voice over IP. Thus, EECC states that the definition of electronic communications services should not be purely based on technical parameters but rather build on a functional approach (recital 15 EECC)<sup>14</sup>. This can be seen as one of the essential modifications in the EECC regulatory approach – the functional approach to several definitions. Such a change can accelerate market development, since operators will have more freedom to arrange their services instead of strict, technical regulations.

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<sup>14</sup> According to Article. 2.1 an electronic communications network means transmission systems, whether or not it is based on a permanent infrastructure or centralised administration capacity, and, where applicable, switching or routing equipment and other resources, including network elements which are not active, which permit the conveyance of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including internet) and mobile networks, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed.



**Fig. 2 Fixed telephone subscriptions in the EU 2010-2018.**<sup>15</sup>

Access to a high-speed internet connection<sup>16</sup> in the EU has been included in the EECC as a central issue of the new regulatory approach. The EECC highlights that access to the internet is essential for economic and social development, participation in public life, social and territorial cohesion. Effective access must be provided to all EU citizens both indoors and outdoors, to the fastest broadband speeds of not less than 30 Mbps by 2020 (recital 109 EECC). Consequently, the EECC has reshaped regulatory principles by adding to the regulatory framework the connectivity objective besides the existing three primary goals: promoting competition, the internal market, and end-user interests. However, the connectivity objective, which is mainly focused on the development of very high capacity networks, seems to be the most prominent regulatory principle for the EU Member States, the national regulatory authorities, and other competent authorities. The EECC highlights several times that the connectivity objective now takes a leading place in the EU regulatory policy. An example of the above is that, according to the EECC, competition in the telecommunication

<sup>15</sup> Source: The World Bank (<https://data.worldbank.org/indicator/IT.MLT.MAIN?end=2018&locations=EU-1W&stArticle=2010&view=chArticle>) Fixed telephone subscriptions refers to the sum of active number of analogue fixed telephone lines, voice-over-IP (VoIP) subscriptions, fixed wireless local loop (WLL) subscriptions, ISDN voice-channel equivalents and fixed public payphones.

<sup>16</sup> The EECC defines a very high capacity network as either an electronic communications network which consists wholly of optical fibre elements at least up to the distribution point at the serving location, or an electronic communications network which is capable of delivering, under usual peak-time conditions, similar network performance in terms of available downlink and uplink bandwidth, resilience, error-related parameters, and latency and its variation; network performance can be considered similar regardless of whether the end-user experience varies due to the inherently different characteristics of the medium by which the network ultimately connects with the network termination point (Article. 2 p. 2).



market is described as the best tool to foster investment in new and existing telecom infrastructure (recital 27 EECC). The EECC determines four general objectives, and formally none of them has been given primacy: 1) Connectivity and access to, and take-up of, very high capacity networks; 2) competition, including efficient infrastructure-based competition; 3) development of the internal market, which means, for instance, removing obstacles for investment in electronic communications networks, and 4) promoting the interests of EU citizens, which means developing very high capacity networks. Three of them are focused on very high-capacity networks. Thus, very high capacity networks can be seen as the main focus of regulatory policy concerning telecom markets in the EU. The other goals seem to only be auxiliary objectives.

Hitherto, the NRAs' duty was to interfere in the economic decisions of the telecoms, mainly through *ex-ante* regulation, to safeguard effective competition on the market, or to establish competitive relations between the incumbents and the new entrants. The objectives of any *ex-ante* regulatory intervention by NRAs to the telecom market are ultimately to produce benefits for end-users in terms of price, quality, and choice. The novelty of the new EU regulatory framework is that the connectivity goal cannot be fulfilled only by the standard *ex-ante* regulatory toolbox and policies known from the previous frameworks.

#### **b. Very high capacity networks – a new regulatory obligation**

The development of very high-capacity networks appears to be a demanding issue for the NRAs and EU institutions such as the EC or BEREC. Moreover, as discussed above, this new issue is changing regulatory policy priorities on the telecom markets. The biggest question for the competent authorities is how to stimulate the market to transform the telecom infrastructure into very high-capacity networks. According to Nałęcz, such development needs a high level of financing activities from the market players i.e., telecom operators (A. Nałęcz, 2020). NRAs' new regulatory instruments are intended to promote the development of very high capacity networks, including that such development entails capital intensity from the investors. Therefore, only the biggest operators on the market, most likely possessing significant market power (SMP),<sup>17</sup> can efficiently invest in very high-capacity networks. In

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<sup>17</sup> SMP is defined in Article 63.2 EECC, and means that undertaking shall be deemed to have significant market power if, either individually or jointly with others, it enjoys a position equivalent to dominance, namely a position of economic strength affording it the power to behave to an appreciable extent independently of competitors, customers and ultimately consumers.

other words, can such a change be beneficial for SMP operators and induce them to invest in very high capacity networks? Nevertheless, it is a chance for less *ex-ante* regulation on the telecoms market.

### c. Promoting competition (*ex-ante* or *ex-post*)

In the past, telecommunication markets, like most networks industries, were national monopolies. The first step in creating a more competitive environment for the telecommunication market was the demonopolization of state-owned operators. At the same time, the demonopolization of the telecommunication industry needed a comprehensive approach, described as a liberalization and harmonization process. The liberalization of the telecommunication markets in the EU required policymakers to accept one of the possible (existing) legal remedies<sup>18</sup>. Thus, the legal remedy shall be understood as a corrective measure taken by public authority decisions or court orders following a finding that an undertaking had either engaged in an illegal abuse of market power<sup>19</sup> or was about to create market power (D. Geradin, and J.G. Sidak, 2003). Generally, legal remedies have a retrospective orientation, which means that a corrective measure is imposed on a subject (undertaking) only after illegal action has been done (*ex-post*). In contrast, legal remedies can have a prospective approach, which allows or even obligates imposing a remedy before any specific finding of illegal conduct (*ex-ante*). Antitrust regulations usually use *ex-post* remedies<sup>20</sup>, and *ex-ante* remedies are generally imposed through sector-specific regulations. In the EU, *ex-ante* remedies were chosen as the most appropriate to create competition in the telecommunication market (sector-specific regulation). This is due to the inability of antitrust regulations (*ex-post*) to create effective competition in the networks industries (for more detail, see: A. de Streel, 2008a or P. Buigues, 2006). Thus, *ex-ante* regulatory obligations should only be imposed where there is no effective competition, i.e., in markets where there are one or more undertakings with SMP, and where national and EU competition law remedies are not sufficient to address the problem. A. de Streel accurately points that:

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<sup>18</sup> For the competence of the EC to abolish all special rights in the telecommunication sector, see Joined Cases 188–190/80 *France, Italy and the UK v Commission* ([1982] ECR 2545) and also Case, C. 202/88 *French Republic v Commission of the European Communities* (Telecommunication Terminal Equipment)[1991] ECR I-1223 (1991).

<sup>19</sup> The EU competition rules laid down by Article 101 (concerted practices that restrict competition) and Article 102 (abuse of dominant position) of the Treaty on the Functioning of the European Union (TFEU) (formerly Articles 81 and 82 of the treaty establishing the European Community (EC Treaty)).

<sup>20</sup> Except for the merger control, Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation).

"substantive differences between antitrust and sector regulations are that sector regulation mainly deals with unsatisfactory market structures whereas competition law deals with unsatisfactory firms' behaviours, (...)" (A. de Stree, 2008a, p. 70). To summarize, ex-ante regulation has been limited to the minimum necessity to meet regulatory policy objectives. This required establishing in the EU Member States a new type of authority responsible for sector-specific regulation for the telecommunication market - NRA<sup>21</sup>. Before the liberalization process, the incumbent performed the regulatory and operational functions. This was one of the major obstacles to introducing effective competition on the market.

A single EU regulatory authority for the telecommunication market was never established due to the lack of legal basis in the EU treaties and the political willingness of the Member States for such a regulator. Implementation of EU regulatory policy was always decentralized, with the specific power of the EC often described as a super-regulator (J. Scherer, 2002). Such a legal model for "imposing" competition on the telecom market has existed from the very beginning of the EU regulation for this market. As an effect of the foregoing regulatory policies, the telecom markets across the EU are now highly competitive. This is shown in the diagrams below (Figs. 3 A and B), where it is evident that average internet prices in the EU are much lower than in other highly competitive countries (South Korea, as the smallest country in the overview, is an exception). National markets now have several competing operators in most of the market segments. Undoubtedly, such a market condition is a superb achievement of the previous EU regulatory policy. However, the current market situation is much more complex. Thus, competition protection should now be accomplished by new regulatory tools that are more appropriate for the market.

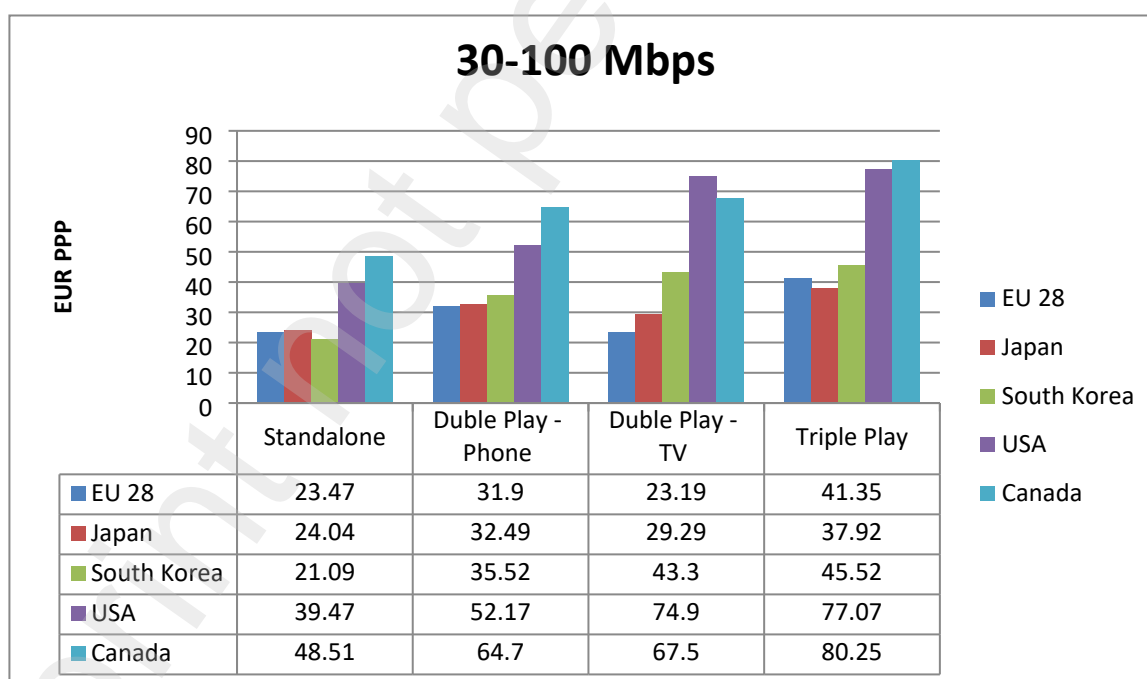
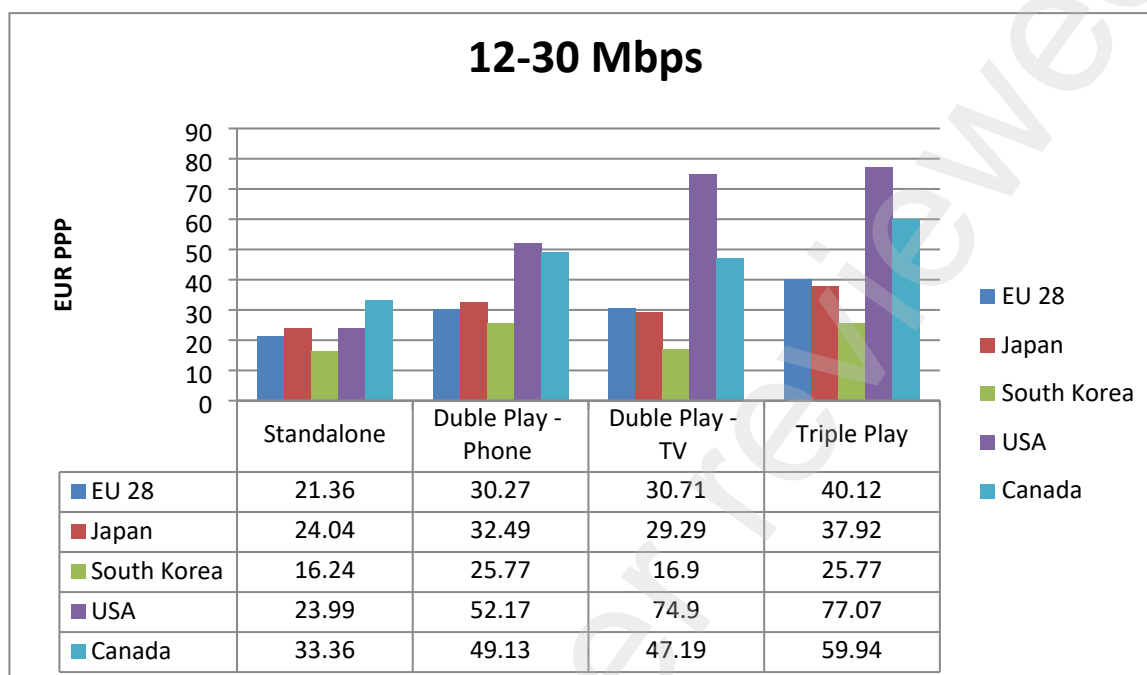
Effective competition in the telecom markets is still one of the key regulatory issues. Therefore, the EECC incorporated most of the pro-competition regulatory tools from the previous Framework Directive, i.e., the definition of SMP, the procedure for identifying and defining markets or imposition, amendment, or withdrawal of the regulatory obligations<sup>22</sup>. The general policy objective for the NRAs is to impose ex-ante regulatory obligations only to the extent necessary to secure effective and sustainable competition in the interest of end-

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<sup>21</sup> For the first time, the definition of an NRA appeared in Council Directive 92/44/EEC of 5 June 1992 on the application of open network provision to leased lines (Official Journal L 165, 19/06/1992 P. 0027–0036). According to this regulation, an NRA has been defined as: *the body or bodies in each Member State, legally distinct and functionally independent of the telecommunications organizations, entrusted by that Member State inter alia with the regulatory functions addressed in this Directive.*

<sup>22</sup> Articles 15-16 of the Framework Directive.

users and relax or lift such obligations as soon as that condition is fulfilled (Article 3.4 (f) EECC).



**Figs. 3 A and B. The EU 28's lowest prices compared to other countries (expressed in EUR/PPP, VAT included)<sup>23</sup>. These two charts show that the average prices in the EU are lower than in the selected highly developed countries.**

<sup>23</sup> Source: EC, Fixed Broadband Prices in Europe 2018.

#### d. Universal service

During the era of monopolies, public operators legally guaranteed telecommunication services for customers with social needs (e.g., disabled) or living in rural (peripheral) areas. Public operators, being monopolists, were able to subsidize the financial losses incurred by providing such services from the other profitable segments (cross subsidization). With the liberalization process, there were concerns that some customers would not be able to access telecommunication or postal services on a competitive market, or that the cost of services would be unaffordable. This was considered to be one of the negative consequences of the liberalization of the markets<sup>24</sup>. The reaction to this was to establish the universal service obligation (USO) which was to be provided by one or more telecoms operators in each EU Member State<sup>25</sup>. Universal service became part of the sector-specific regulation described as *social* or *economic regulation*. Thus, universal service is an essential part of the sector-specific regulation on each network industry. Moreover, access to their services has a civilizational aspect.

Universal service is part of the services of general economic interest (SGEI). There is no legal definition of the SGEI, but the EU legal documents highlight that the concept of SGEI designates "(...) universal service, continuity, quality of service, affordability, and user and consumer protection". SGEI is an "EU legal category that provides an exception to the competition rules for the proportionate pursuit of legitimate public interest goals by private undertakings" (Sauter, 2008, p. 1). The presence of the universal service on the infrastructural markets, like the postal sector, is the consequence of the liberalization process. As was mentioned, when state-owned public operators were monopolists, they were legally obliged to offer some categories of services. However, introducing free competition to the market raised concerns that some users could be excluded from access to some unprofitable postal services, or that such services could be unaffordable for users. Thus, the remedy for potential negative consequences was establishing the USO: "In a liberalized market environment, a universal

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<sup>24</sup> Towards a competitive Community-wide telecommunications market in 1992: implementing the Green Paper on the development of the common market for telecommunications services and equipment : state of discussions and proposals by the Commission; COM (88) 48 final.

<sup>25</sup> In most of the EU countries, there was USO and universal service provider, however, in Germany, there was no universal service obligation (Deutsche Telekom provided a service without any obligation). In Sweden there was a USO but there was no designated universal service provider.

services obligation guarantees that everybody has access to the service at an affordable price and that the service quality is maintained and, where necessary improved".<sup>26</sup>

Compared to other network markets, telecommunication universal service is subject to the quickest changes. This is due to the rapid technological evolution of this sector. Telephone boxes (telephone booths) are perhaps the best example of universal service's evolution, since they no longer pay for themselves but nevertheless they still survive as an iconic symbol in some countries. Previous EU regulations strictly regulated the scope of USO as a minimum set of services that must be made available for customers. According to these directives, universal service was made available at the quality specified to all end-users and at an affordable price. More and more countries decided not to designate a universal service provider in recent years because the market ensured universal service with no need for regulatory intervention (the first one was Germany). Therefore, designation of the USP was never a legal obligation in the Universal Service Directive 2002/22/EC.

As can be expected from a directive creating a new regulatory policy, the EECC contains numerous changes in universal service. Accordingly, in the EECC universal service must evolve to reflect advances in technology, market developments, and changes in user demand (recital 210 EECC). The increasing competition on the market and consumer choice for different sources of communications services was another factor that determined the need for modernization in universal service regulations. Thus, the EECC stipulates that affordable adequate broadband internet access is an essential part of USO, in addition to voice communications services (Article 84 EECC). Such access is now crucial for both society and the economy. A modern society like the EU is currently moving to the digital economy (A. Stavyt'skyi et al., 2019, p. 257) and society living online. Member States may extend the scope of USO to end-users that are microenterprises and small and medium-sized enterprises, and not-for-profit organizations. This means that USO can now become more "universal", not only limited to customers with special needs. That must be seen as a proper step.

The issue of who should be a universal service provider has been left to the Member States. However, regulatory intervention and the designation of a universal service provider is an exception to be used only when the minimum set of universal service (availability at a fixed location of an adequate broadband internet access service and of voice communications services) cannot be ensured under normal commercial circumstances or through other

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<sup>26</sup> Green Paper on services of general interest COM(2003) 270 final, p.16.

potential public policy tools. In such a situation, Member States may designate one or more undertakings to guarantee such availability throughout the national territory. Thus, under normal commercial circumstances, the minimum set of universal services shall be provided by the market – and thus different telecoms operators.

The role of NRAs is still essential in ensuring and safeguarding USO. The scope of NRAs' responsibility is: a) monitoring the evolution and level of retail prices (Article 85 EECC); b) tariff options or packages to consumers with a low income or special social needs offered by undertakings (Article 85 EECC); c) calculating the net costs on the compensation request by providers of a broadband internet access service, voice communications services or the continuation of the existing universal service when such services place an unfair burden on providers (Article 89 EECC), and d) the management of the sharing mechanism if the net cost of USO is shared between providers of electronic communications networks and services (Article 90 EECC).

#### **4. Postal market**

The postal and delivery industry plays a significant role in the EU economy. This is proved by hard figures showing the number of employment positions, the postal operators' revenues, or the postal contribution in the GDP. Moreover, the extraordinary situation caused by the COVID-19 pandemic showed that the postal industry plays an indispensable role in every society, particularly during lockdowns (Chołodecki, 2023). The significance of this sector should be seen in its role in modern society. In these terms, the postal market continues to be significant in European social life. Hence, unlike any other network industry, the postal market is rapidly changing, adjusting to contemporary social and public needs.

The EU Member States' telecommunication markets are generally comparable, but each postal market remains distinct (not only in the EU). As a result, there are hardly two similar postal markets in the EU. This is one of the fundamental differences between these two network markets. Thus, the above suggests that forming the next regulatory framework for the EU postal market can be challenging. In light of this remark, further analysis of the EECC's impact on future postal regulation must be considered.

##### **a. The need for a change – the market transformation**

Two major trends currently occurring in the postal market, outside the scope of EU postal regulation, are digitalization and platformization. Digitalization is understood as the e-substitution of public services (e-administration)<sup>27</sup>, which causes a decline in letter volume but an increase in e-commerce and a rapidly growing parcel market. In business science, platforms are illustrated as providing the infrastructure and governance to facilitate interactions between autonomous agents. The role of platforms is to link agents on two or more market sides that directly determine the conditions of their interaction, maintaining residual control rights over their assets. Platforms, therefore, assume a mediator role, aiming to provide optimal matches between agents on both market sides, often through digital technologies (Julian R.K. Wichmann et al., 2022, p. 111). Thus, platformization is a business model associated with e-commerce that substantially impacts the postal market. For the postal market, platformization is an integrated business (ecosystem) with a digital marketplace, often offering its products and services. The problem for the postal market is that assets (goods) are delivered to customers directly throughout their distribution channels (e.g., by Amazon on the international level and locally by Allegro in Poland), omitting both couriers and postal operators. Hence, they fall outside the purview of postal regulation due to their non-conformance with the postal service definition. Platformization may also potentially pose a threat to competition.

Digitalization and platformization are the most important new challenges for the postal market. These trends directly affect users by changing their needs and expectations (M. Finger et al., 2005, p. 12, 23). The UPU acknowledges the importance of e-commerce for traditional postal operators' highlighting that "to succeed in the competitive field of e-commerce, Posts need to rapidly establish an integrated cross-border e-commerce ecosystem, which is to be provided by postal operators through physical e-commerce hubs interfaced with online e-commerce platforms. With e-commerce growth set to continue over the coming years, Posts should continue to play a vital role in the e-commerce market by leveraging their core competencies" (UPU, 2020, p. 24). However, it is unclear how the market (operators) will answer these expectations and how they will adapt to them. It can be assumed that the

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<sup>27</sup> The e-substitution is caused mainly by Regulation (EU) no 910/2014 of the European Parliament and the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC (eIDAS). The eIDAS provides e-administration for registered electronic delivery, allowing sending and receiving data that enjoy a legal presumption of its authenticity and integrity. This tool may be effectively used in courts and administrative proceedings. Such deliveries are analogous to those assigned to the delivery of traditional registered mail. Consequently, many EU countries have witnessed the expansion of IT systems, becoming a modern equivalent of a traditional postal service. However, from the postal law perspective, digitalization is not included in the EU postal regulation, i.e., it is not a part of the universal service obligation, which is based only on the traditional mail service.



traditional roles in the postal market performed by postal operators (incumbents) and courier operators are changing, and platforms like Amazon, Alibaba or Allegro will try to supersede them. There is no doubt that these trends will primarily affect not only incumbents - universal service providers predominantly active on the traditional segments of the market, like letters. Therefore, this ongoing transformation must be included in the future EU regulatory framework.

A good example of a new international regulation accommodating the postal market for e-substitution is this adopted by the Universal Postal Union (UPU)<sup>28</sup>. In 2016 at the 26th UPU Congress a new type of postal service was added - electronic postal services, which comprise: electronic postal mail, electronic postal registered mail, electronic postal certification mark, and electronic postal mailbox (Article 17 of the UPU Convention). They are the digital equivalent of the traditional postal services. This part of the UPU Convention is not a mandatory element for the member countries' regulation, but it shows an ongoing trend. Digital communications are increasingly common alternatives for traditional letters, now for the older generations too. At the same time, universal service providers cannot close down the postal letter segment just like that, nevertheless it is shrinking overall.

The literature consensus is that the postal regulatory framework needs to be changed (i.e., S. Romito et al., 2020; Hearn, 2020; Gori et Parcu, 2020, or Chołodecki, 2020). Without a suitable regulatory response, current legal institutions like the USO will lose their significance for users and can become more expensive for providers. Therefore, the EECC must be seen as a legal framework for adjusting regulatory institutions and their toolbox to new challenges in the telecommunication market.

#### **b. The shape of the Universal Postal Service**

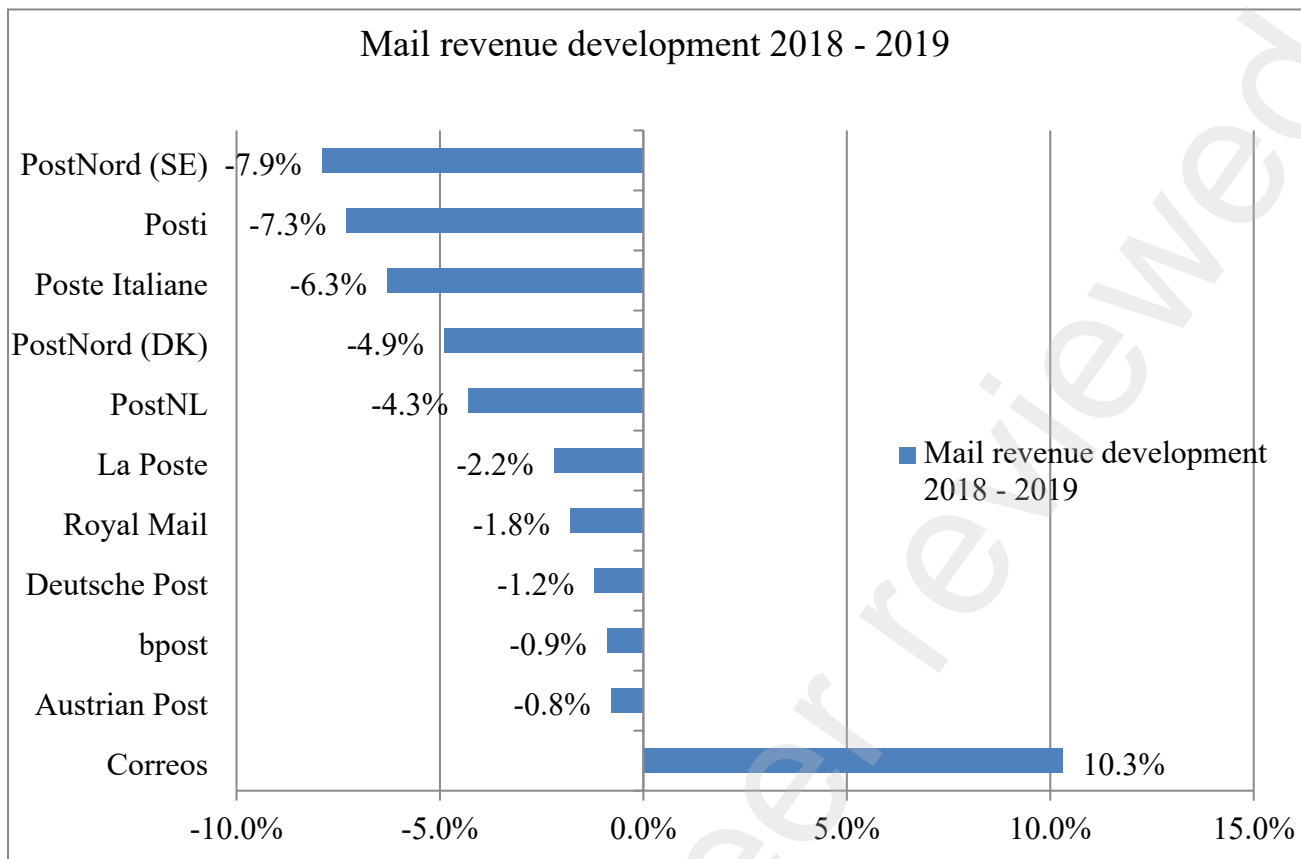
It is no exaggeration to assert that the universal postal service is an essential part of the EU sector-specific regulation. As a result, the main regulatory goal of the NRA is safeguarding the universal service. Safeguarding the right to universal service for all users is an obligation of all the EU Member States (Article 3 Postal Directive). Currently, the biggest obstacle of the USO is excessively detailed EU regulations. USO comprises the permanent provision of a postal service of specified quality at all points in their territory at affordable prices for all users (Article 3.1 Postal Directive). Furthermore, the universal service must be

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<sup>28</sup> The Universal Postal Union is a United Nations specialized agency and the postal sector's primary forum for international cooperation.

guaranteed not less than five working days a week, save in circumstances or geographical conditions deemed exceptional, and it includes as a minimum: one clearance and one delivery to the home, premises, or one delivery to appropriate installations (Article 3.3 Postal Directive). Given the decline in the letter market and concerns about price affordability, the USO can potentially incur significant costs (Chołodecki, 2020). However, it should not be automatically assumed (per se) that the USO constitutes a financial burden (Bergqvist, 2023, p. 13).

As mentioned above, postal markets in the EU Member States differ from each other significantly. This difference has several grounds. First of all, every postal market has its historical background and unique development path. Factors such as the size of the country, population density, the character of the landscape, the scale of urbanization, users' expectations, and citizens' wealth. All these factors have shaped postal markets. Therefore, it is even hard to categorize (or group) EU postal markets to make some simplifications. As is shown in Fig. 4, revenue from mail can vary significantly between some of the presented USPs. Finally, like every element of the postal market, universal service is subject to rapid technological changes. Thus, these factors should strongly indicate future USO regulations'.



**Fig. 4 Mail revenue development 2018 – 2019<sup>29</sup>.**

Like in the EECC, universal postal service must evolve to reflect advances in technology, market developments, and changes in user demand. The growing competition from the alternative postal operators (couriers) is an additional factor for the modernization of universal service regulations. Thus, the current shape of the universal postal service should be changed. The EECC implies that universal service will be an important element of the next EU regulation, with the SGEI core elements, like being available at the quality specified to all end-users and at an affordable price. The designation of a universal service provider should be an option reserved for NRAs. This is an opportunity especially for smaller countries with advanced digitalization processes. On the telecoms market, the designation of the USP was never a legal obligation, and in some EU Member States, the market is providing universal service with no need for regulatory intervention.

<sup>29</sup> Source: PostNL, *European Postal Markets 2021 an overview*, p.21. The difference between 2018 and 2019 mail revenues in local currency. The revenues include domestic and cross border activities. PostNL 2019 revenue includes Sandd revenue as from 1-10-2019.

The digitalization process described above leads to the digital economy and society living online; that is why governments are trying to provide public services in a digitalized form (P. Gori & P. L. Parcu, 2020). The "cost-saving potential for senders" and "the convenience to access, save, and store communication" (Copenhagen Economics, 2018, p. 36) are also important factors for digitalization. Therefore, the universality of universal service requires adding digital services to the USO, as UPU recommends. Romito and co-authors accurately pointed out that "The Incumbent Postal Operator could become the "link" between the communication and delivery markets that are being heavily impacted by digitalization, and physical communication has been more and more displaced by digital communication, while the delivery market has experienced an enhanced role due to digitalization" (Romito et al., 2020, p. 61). The role of the postal NRAs should be essential in ensuring and safeguarding the USO on the postal market.

### **c. Competition and regulatory power**

The postal directives have provided limited sector-specific tools for NRAs to promote competition, primarily focusing on regulating narrow access to postal infrastructure, as outlined in Article 11a of the Postal Directive. In place of dedicated sector-specific tools, the postal directive have instituted accounting and cost allocation measures aimed at mitigating anti-competitive cross-subsidization by incumbent postal providers. In response to the shifting competitive dynamics in the postal sector, significant legal precedents have emerged, notably in the EU courts<sup>30</sup>. Among these, the rulings by the European Court of Justice in the *Post Danmark I*<sup>31</sup> and *Post Danmark II*<sup>32</sup> cases stand out. These rulings introduced anti-competitive measures (address the criteria governing rebates offered by dominant undertakings) aimed at former state monopolies such as Post Denmark. However, it is crucial to note that the market conditions that prompted these cases have evolved significantly over time. In a notable development, Denmark, at the forefront of the letter market decline in Europe, is poised to relinquish its USP designation starting in 2023. This transition signifies a shift towards market-driven fulfilment of the USO.

As a result, the liberalization process of the EU postal market has been limited to lifting the legal monopoly and other market restrictions. To present possible changes in the

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<sup>30</sup> Case C-399/08 *Commission v Deutsche Post* judgment of 2 September 2010 (*Deutsche Post I*) or case C-293/15 *Slovenská pošta v Commission* judgement 30 June 2016.

<sup>31</sup> Case C-209/10, *Post Danmark A/S v Konkurrencerådet*, judgment of 27 March 2012 (*Post Danmark I*).

<sup>32</sup> Case C-23/14 *Post Danmark A/S v Konkurrencerådet*, judgment of 6 October 2015 (*Post Danmark II*).

EU postal framework, we need to make a simplified characterization of NRAs' existing regulatory toolbox. Thus, the EU postal markets consist of two major segments:

- Traditional (mail) – it is highly regulated with a USO as the central element of the segment. Competition faces limitations primarily due to economic barriers like entry costs and the ongoing decline in letter volumes, driven by the structure of the USO dedicated to maintaining universal service. Additionally, the digitalization trend is impacting this segment in several countries. Consequently, the majority of NRA regulatory power and responsibility are directed toward this segment, characterized by social regulation aimed at safeguarding the USO.
- Alternative (CEP) – it is a free market with very strong competition. Almost complete absence of any regulatory power from the NRA. The segment is focused on the e-commerce parcel market. The out-of-home delivery infrastructure like parcel lockers is another distinctive element of this market. In addition, the platformization trend impacts this segment.

Some European postal undertakings, such as German Deutsche Post, UK Royal Mail, or French La Poste, operate in both segments of the postal market. However, they often establish or acquire separate companies (such as DH, GLS, and DPD) to operate in the alternative segment. This strategic move is often undertaken to alleviate the regulatory measures that could affect their status as USPs, as mandated by postal regulations. In essence, when a single corporation participates in both postal segments, it adheres to different rules and adopts distinct business models for each<sup>33</sup>.

In this section of the study, we aim to understand why competition has been absent in the traditional postal market while flourishing in the alternative segment. The possible answer can be obtained by noticing the telecommunication market and the foundation concepts of liberalization of this market. From the very beginning, the transformation of the telecommunication markets requires a specific legal apparatus necessary to achieve effective competition – sector-specific regulation with *ex-ante* obligation as a part of the NRA legal toolbox. Notably, in most EU Member States, this policy seems effective since the telecommunication markets are highly competitive and the market provides even universal service with no need for regulatory intervention. This raises the question of future policy for both segments of the postal market. *Ex-ante* obligations can only achieve effective

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<sup>33</sup> An example from a non-EU country is the Swiss Post, the postal incumbent in Switzerland, which has a strong position in both market segments.

competition on the infrastructural markets like the postal market, i.e., access to the crucial elements of the infrastructure. According to the EECC, "access" means the making available of facilities or services to another undertaking, under defined conditions, to provide electronic communications services; it covers, among other things: access to network elements and associated facilities, which may involve the connection of equipment, by fixed or non-fixed means (in particular this includes access to the local loop and to facilities and services necessary to provide services over the local loop); access to physical infrastructure including buildings, ducts, and masts (Article 2.27 EECC). The telecommunication NRA may impose obligations on undertakings to meet reasonable requests for access to, and use of, specific network elements and associated facilities in situations where denial of access or unreasonable terms and conditions having a similar effect would hinder the emergence of a sustainable competitive market at the retail level, and would not be in the end-user's interest (Article 73.1 EECC). Thus, the EECC does not limit access to any telecom infrastructure elements and does not exclude any undertakings to gain such access. In contrast, the postal directive grants non-discriminatory access to elements of postal infrastructure or services provided within the scope of the universal service. This access is limited to the postcode system, address database, post office boxes, delivery boxes, information on change of address, re-direction service, and return to sender service (Article 11a Postal Directive). However, this access is strictly connected to the USO. Therefore, the access defined by the postal market is more like a prosthesis rather than an effective pro-competitive tool.

Since liberalization began with postal directive 97/67/EC, the subsequent postal regulations followed the telecommunication framework. The EECC suggests that the following postal regulatory framework may possibly be equipped with a pro-competitive sector-specific regulation similar to the telecommunication framework. Both described segments of the postal market need pro-competitive regulations. The traditional segment needs effective competition, especially through allowing access to incumbents' infrastructure, and the alternative segment needs to be able to access competitors' out-of-home delivery (OOH) infrastructure. Sector-specific regulation could serve as a valuable means to achieve these objectives within the postal market<sup>34</sup>.

#### **d. CEP as postal service**

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<sup>34</sup> Contrary arguments has been presented F. Russo at al. (2023).

The value of online sales in the EU doubled between 2012 and 2017, from €121 bn to €224 bn<sup>35</sup>. Consequently, the Courier, Express and Parcel (CEP) industry, which delivers e-commerce goods, is also growing. The constant growth of e-commerce is now a key factor for the EU postal market. However, delivering parcels requires different infrastructural solutions from distribution centers, due to the greater variety of parcel sizes and shapes, and necessitates the adoption of different delivery solutions, like OOH. In all the EU Member States, OOH infrastructure is rapidly developing. The significance can be demonstrated by the number of parcel machines in Poland (11,000), Spain (10,000) and Germany (7,000). Nevertheless, the pick-up and drop-off (PUDO) points have reached the following numbers in Germany (57,000), France (45,000), UK (38,000), and Italy (36,000)<sup>36</sup>.

Due to technological development and consumer expectations, the telecom regulation evolved from (focusing on) fixed-telephony to high-speed internet access. The postal market is facing comparable evolution from the letter market to CEP. This evolution needs an appropriate response. Therefore, the EECC made some of the crucial definitions in line with a more functional approach rather than a technical one, i.e., the definition of electronic communications services (recital 15 EECC). This is one of the essential modifications in the EECC regulatory approach.

Following the EECC changes to the regulatory framework, it can be assumed that certain postal definitions will be changed, and new ones will emerge. This is because the CEP market needs new definitions to compose a comprehensive framework. OOH and PUDO need to be defined, with parcel lockers as an element of postal infrastructure. In addition, the platformization of the market must be taken into account to protect consumers. UPU pointed out that “the use of postal service assets for new services generated by digital development requires a redefinition of the relevant market, where “universal service” encompasses not only traditional letter mail, but also digital communications and e-commerce packets.” (D. N. Corredera, T. B. Leta, 2019, p. 127).

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<sup>35</sup> Commission Staff Working Documents, European retail sector fit for the 21st century, SWD(2018) 236 final.

<sup>36</sup> "Last Mile Experts, *Out-Of-Home Delivery in Europe 2021*.

## 5. Conclusions

In summary, this research highlights the evolving landscape of postal regulation in the EU, drawing parallels with the dynamic telecommunications sector. The introduction of the EECC serves as a critical indicator for the future direction of postal service regulation. The EECC's objectives, emphasizing very high-capacity networks, signal a shift in regulatory priorities in the telecommunications market. This shift has implications for postal service regulation in three main areas: 1) USO: The traditional concept of USO, while important, should become more adaptable to local demands and less detailed at the EU regulatory level. Flexibility in USO design can better accommodate changing postal market dynamics. 2) Competitive Framework: Sector-specific regulation at the NRA level should be enhanced to provide effective tools for intervention. Special emphasis should be placed on to ensure fair competition across postal market segments. 3) Competitive Framework: Sector-specific regulation at the National Regulatory Authority (NRA) level should be enhanced to provide effective tools for intervention. Special emphasis should be placed on regulations addressing SMP to ensure fair competition across postal market segments. In moving forward, the new postal regulatory framework should adopt a more market-oriented approach, unifying both postal market segments under a consistent regulatory regime. Introducing pro-competitive measures (ex-ante) within the NRA's toolkit is crucial. Out-of-Home (OOH) delivery points, such as parcel lockers, should be treated as integral parts of the postal network. Failure to adapt the regulatory framework risks creating market imbalances favoring new entrants, notably e-commerce platforms.

While the nature of postal services has evolved, they remain essential arteries of global commerce, now facilitating the movement of goods rather than information in the form of letters. The regulatory landscape must evolve to support this transformation effectively.



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