

# Universal Service Directive: Commission refers Portugal to the Court

To balance the costs for the provision of universal service, which are not always profitable, Member States may introduce mechanisms to compensate them. The Portuguese authorities have imposed an obligation on telecom service providers to compensate the net costs of all universal services provided from 2007 onwards by the universal service provider. Portugal only did so in 2012, using a possibility provided by the Electronic Communication Law (No 5/2004), by enacting a new law which establishes an extraordinary contribution.

Contrary to EU law, Portuguese authorities are asking operators to make an extraordinary contribution in 3 consecutive years for the financing of the net cost of the universal service incurred in the past. This is not in line with the requirements of transparency, non-discrimination and least market distortion established by the Universal Service Directive ([Directive 2002/22/EC](#)) in force in the EU since 2002 (Article 13 and Annex IV, Part B). The Commission is now calling on the Court of Justice of the EU to confirm that the extraordinary compensation infringes this Directive.

The Commission opened the infringement proceedings against Portugal in February 2015 and sent a reasoned opinion in [April 2016](#). Since Portugal has not complied yet with EU law, the Commission has decided to refer this case to the Court of Justice of the EU.

## **Background**

According to the [2002 Universal Service Directive \(Directive 2002/22/EC\)](#), Member States must ensure that a set of minimum electronic communications services of a specified quality and at an affordable price are available to all users in their territory, regardless of their geographical location. At the same time, the Directive also makes sure that those users who request a connection at a fixed location to the public communications network (i.e. electronic communications services available to the public, such as telephone and functional internet access) at a given place are provided with one. Member States may designate a universal service provider for that purpose.

To offset the net costs that designated providers incur as a result of providing a universal service (which is not always profitable), Member States may introduce mechanisms to compensate the net cost for the provision of these services. Such mechanisms may provide for compensation either from public funds or by sharing the net cost between providers of electronic communications.

Articles 13(3) and Annex IV, Part B of the Universal Service Directive, concerning the financing of the universal service obligation, provides that if a Member State decides that providers of electronic communications

networks must share the net cost of universal service obligations, this sharing mechanism shall respect the principles of transparency, least market distortion, non-discrimination and proportionality.

#### **For More Information**

- The 2002 Universal Service Directive ([Directive 2002/22/EC](#))
- On the key decisions in the November 2018 infringements package, see full [MEMO/18/6247](#).
- On the general infringements procedure, see [MEMO/12/12](#).
- On the [EU infringements procedure](#).