Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

18 December 2025*

(Reference for a preliminary ruling – Postal parcel delivery services provided to the public – Directive 97/67/EC – Articles 22 and 22a – Regulation (EU) 2018/644 – Article 4 – Decision of the national regulatory authority imposing on parcel delivery service providers obligations to provide information – Legal basis for the competence of that authority to impose specific obligations to provide information on operators not carrying out cross-border parcel delivery – Proportionality)

In Case C-345/24,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 9 May 2024, received at the Court on 10 May 2024, in the proceedings

Autorità per le Garanzie nelle Comunicazioni (AGCOM)

v

BRT SpA,

Federazione Italiana Trasportatori (FEDIT),

Associazione Italiana dei Corrieri Aerei Internazionali (AICAI),

DHL Express (Italy) Srl,

TNT Global Express Srl,

Fedex Express Italy Srl,

United Parcel Service Italia Srl,

Amazon Italia Transport Srl,

Amazon Italia Logistica Srl,

Amazon EU Sàrl,

* Language of the case: Italian.

interveners:

Amazon Italia Transport Srl,

Amazon Italia Logistica Ltd,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, J. Passer, E. Regan, D. Gratsias and B. Smulders (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 26 March 2025,

after considering the observations submitted on behalf of:

– BRT SpA, by E. Fumagalli, A. Manzi, and L. Scambiato, avvocati,

– the Federazione Italiana Trasportatori (FEDIT), by M. Giordano, avvocato,

– the Associazione Italiana dei Corrieri Aerei Internazionali (AICAI), DHL Express (Italy) Srl, TNT Global Express Srl, Fedex Express Italy Srl and United Parcel Service Italia Srl, by M. Giordano, avvocato,

– Amazon Italia Transport Srl, Amazon Italia Logistica Srl and Amazon EU Sàrl, by M. Clarich, G. Fonderico and G. Nava, avvocati,

– the Italian Government, by S. Fiorentino, acting as Agent, and by E. De Bonis and B. Fiduccia, avvocati dello Stato,

– the European Parliament, by I. Anagnostopoulou, C. Ionescu Dima and L. Stefani, acting as Agents,

– the Council of the European Union, by M. Balta and A. Maceroni, acting as Agents,

– the European Commission, by G. Conte and M. Mataija, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 5 June 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation and legality of Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services (OJ 2018 L 112, p. 19) and the interpretation of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the

development of the internal market of Community postal services and the improvement of quality of service (OJ 1998 L 15, p. 14), as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 (OJ 2008 L 52, p. 3) ('Directive 97/67').

2 The request has been made in proceedings between the Autorità per le Garanzie nelle Comunicazioni (Communications Regulatory Authority, Italy) (AGCOM) and operators authorised to provide postal parcel delivery services to the public, BRT SpA, the Federazione Italiana Trasportatori (FEDIT), the Associazione Italiana dei Corrieri Aerei Internazionali (AICAI), DHL Express (Italy) Srl, TNT Global Express Srl, Fedex Express Italy Srl, United Parcel Service Italia Srl, Amazon Italia Transport Srl, Amazon Italia Logistica Srl and Amazon EU Sàrl (the latter three being referred to as 'the Amazon group companies') concerning the legality of a decision adopted by that authority which imposes on those operators certain obligations to provide information.

Legal context

European Union law

– *Directive 97/67*

3 Pursuant to recitals 11, 13, and 22 of Directive 97/67:

'(11) … it is essential to guarantee at Community level a universal postal service encompassing a minimum range of services of specified quality to be provided in all Member States at an affordable price for the benefit of all users, irrespective of their geographical location in the [European] Community;

…

(13) … universal service must cover national services as well as cross-border services;

…

(22) … Member States should be able to regulate, by appropriate authorisation procedures, on their territory, the provision of postal services which are not reserved to the universal service providers; … those procedures must be transparent, non-discriminatory, proportionate and based on objective criteria;

…'

4 Article 2 of that directive provides:

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

1. *postal services*: services involving the clearance, sorting, transport and delivery of postal items;

1a. *postal service provider*: undertaking that provides one or more postal services;

…

6. *postal item*: an item addressed in the final form in which it is to be carried by a postal service provider. In addition to items of correspondence, such items also include for instance books, catalogues, newspapers, periodicals and postal parcels containing merchandise with or without commercial value;

…

19. *essential requirements*: general non-economic reasons which can induce a Member State to impose conditions on the supply of postal services. These reasons are the confidentiality of correspondence, security of the network as regards the transport of dangerous goods, respect for the terms and conditions of employment, social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law and, where justified, data protection, environmental protection and regional planning. …'

5 Article 9(1) and (2) of that directive, which falls under Chapter 4 thereof, entitled 'Conditions governing the provision of postal services and access to the network', provides:

'1. For services which fall outside the scope of the universal service, Member States may introduce general authorisations to the extent necessary to guarantee compliance with the essential requirements.

2. For services which fall within the scope of the universal service, Member States may introduce authorisation procedures, including individual licences, to the extent necessary in order to guarantee compliance with the essential requirements and to ensure the provision of the universal service.

The granting of authorisations may:

…

– where appropriate, be made subject to or impose an obligation to respect working conditions laid down by national legislation.

…'

6 Pursuant to Article 22(1) and (2) of the same directive:

'1. Each Member State shall designate one or more national regulatory authorities [("NRAs")] for the postal sector that are legally separate from and operationally independent of the postal operators. Member States that retain ownership or control of postal service providers shall ensure effective structural separation of the regulatory functions from activities associated with ownership or control.

Member States shall inform the [European] Commission which [NRAs] they have designated to carry out the tasks arising from this Directive. They shall publish the tasks to be undertaken by [NRAs] in an easily accessible form, in particular where those tasks are assigned to more than one body. Member States shall ensure, where appropriate, consultation and cooperation between

those authorities and national authorities entrusted with the implementation of competition law and consumer protection law on matters of common interest.

2. The [NRAs] shall have as a particular task ensuring compliance with the obligations arising from this Directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service. They may also be charged with ensuring compliance with competition rules in the postal sector.

…'

7 Article 22a of Directive 97/67, which falls under Chapter 9a thereof, entitled 'Provision of information', provides:

'1. Member States shall ensure that postal service providers provide all the information, in particular to the [NRAs], including financial information and information concerning the provision of the universal service, namely for the following purposes:

(a) for [NRAs] to ensure conformity with the provisions of, or decisions made in accordance with this Directive,

(b) for clearly defined statistical purposes.

2. Postal service providers shall provide such information promptly on request and in confidence, where necessary, within the timescales and to the level of detail required by the [NRA]. The information requested by the [NRA] shall be proportionate to the performance of its tasks. The [NRA] shall give the reasons justifying its request for information.

3. Member States shall ensure that [NRAs] provide the Commission, upon request, with appropriate and relevant information necessary for it to carry out its tasks under this Directive.

4. Where information is considered confidential by [an NRA], in accordance with Community and national business confidentiality rules, the Commission and the [NRAs] concerned shall preserve such confidentiality.'

– *Directive 2008/6/EC*

8 Recital 51 of Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008 amending Directive 97/67 with regard to the full accomplishment of the internal market of Community postal services states:

'[NRAs] need to gather information from market players in order to carry out their tasks effectively. Requests for information should be proportionate and not impose an undue burden on undertakings. …'

9 Point 21 of Article 1 of Directive 2008/6 inserted into Directive 97/67 Chapter 9a, including an Article 22a, which is cited in paragraph 7 above.

– *Regulation 2018/644*

10 Recitals 5, 13, 16 and 18 of Regulation 2018/644 state:

‘(5) There are fundamental differences between Member States when it comes to competences conferred on [NRAs] with regard to market monitoring and regulatory oversight of parcel delivery service providers. For example, some authorities are able to successfully require providers to supply relevant price information. The existence of such differences has been confirmed by a joint opinion of the Body of European Regulators for Electronic Communications [(BEREC)] and the European Regulators group for Postal Services [(ERGP)], which concluded that [NRAs] need the appropriate regulatory powers to intervene and that such powers do not seem to be present in all Member States. Those differences result in additional administrative burdens and compliance costs for parcel delivery service providers who operate across borders. Those differences therefore constitute an obstacle to the cross-border provision of parcel delivery services and thus have a direct effect on the functioning of the internal market.

…

(13) Currently, postal services are regulated by Directive [97/67]. That Directive establishes common rules governing the provision of postal services and the universal postal service within the [European] Union. It focuses primarily, but not exclusively, on national universal services and does not address regulatory oversight of parcel delivery service providers. Compliance with the minimum universal service requirements laid down in that Directive is ensured by [NRAs] designated by Member States. This Regulation therefore complements, in so far as cross-border parcel delivery services are concerned, the rules set out in Directive [97/67]. This Regulation is without prejudice to the rights and guarantees set out in Directive [97/67], including in particular the continued provision of a universal postal service to users.

…

(16) For the purpose of implementing this Regulation, it is important to provide clear definitions of parcels, parcel delivery services and parcel delivery service providers and to specify which postal items are covered by those definitions. …

(17) Providers of parcel delivery services using alternative business models, for example those drawing on the collaborative economy and e-commerce platforms, should be subject to this Regulation if they provide at least one of the steps in the postal delivery chain. Clearance, sorting and distribution, including pick-up services, should be considered parcel delivery services, including when they are provided by express and courier service providers, as well as consolidators, in line with current practice. …

(18) This Regulation should not apply to undertakings that are established in only one Member State and that have domestic in-house delivery networks only in order to fulfil orders of goods that they themselves have sold under a sales contract within the meaning of point 5 of Article 2 of Directive 2011/83/EU of the European Parliament and of the Council [of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive

85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council (OJ 2011 L 304, p. 64)]. Undertakings that also use domestic in-house delivery networks for the delivery of goods sold by third parties should be subject to this Regulation.'

11 Article 2 of Regulation 2018/644, entitled 'Definitions', defines, in point 3 thereof, the concept of 'parcel delivery service provider' as 'an undertaking that provides one or more parcel delivery services with the exception of undertakings established in one Member State alone, that only provide domestic parcel delivery services as part of a sales contract and as part of the contract personally deliver goods that are subject of that contract to the user'.

12 Article 4 of that regulation, entitled 'Provision of information', provides:

'1. All parcel delivery service providers shall submit to the [NRA] of the Member State in which they are established the following information, unless that [NRA] has already requested and received it:

(a) their name, legal status and form, registration number in a trade or similar register, VAT identification number, the address of their establishment and the contact details of a contact person;

(b) the characteristics, and, where possible, a detailed description, of the parcel delivery services they offer;

(c) their general terms and conditions for parcel delivery services, including details of complaints procedures for users and any potential limitations of liability.

2. Parcel delivery service providers shall inform the [NRA] of any change to the information referred to in paragraph 1 within 30 days.

3. By 30 June of each calendar year, all parcel delivery service providers shall submit to the [NRA] of the Member State in which they are established the following information, unless that [NRA] has already requested and received it:

(a) the annual turnover in parcel delivery services for the previous calendar year in the Member State in which they are established, broken down into domestic, incoming and outgoing cross-border parcel delivery services;

(b) the number of persons working for them over the previous calendar year involved in the provision of parcel delivery services in the Member State in which they are established, including breakdowns showing the number of persons by employment status, and in particular, those working full-time and part-time, those who are temporary employees and those who are self-employed;

(c) the number of parcels handled over the previous calendar year in the Member State in which they are established, broken down into domestic, incoming and outgoing cross-border parcels;

(d) the names of their subcontractors, together with any information that they hold concerning the characteristics of parcel delivery services provided by those subcontractors;

(e) where available, any publicly accessible price list applicable on 1 January of each calendar year for parcel delivery services.

4. By 23 September 2018, the Commission shall adopt an implementing act, establishing a form for the submission of the information referred to in paragraphs 1 and 3. That implementing act shall be adopted in accordance with the examination procedure referred to in Article 12.

5. The [NRAs] may impose information requirements additional to those referred to in paragraphs 1 and 3, provided that they are necessary and proportionate.

6. Paragraphs 1 to 5 shall not apply to any parcel delivery service provider which had over the previous calendar year on average fewer than 50 persons working for it and involved in the provision of parcel delivery services in the Member State in which that provider is established, unless that provider is established in more than one Member State. [An NRA] may include in the threshold of 50 persons the persons working for the parcel delivery service provider's subcontractors.

7. Notwithstanding paragraph 6, [an NRA] may request the information to be submitted under paragraphs 1 to 5 by any parcel delivery service provider which employed over the previous calendar year on average between 25 and 49 persons where the specificities of the Member State concerned so require and provided that it is necessary and proportionate to ensure conformity with this Regulation.'

13 Article 5 of that regulation, entitled 'Transparency of cross-border tariffs', provides, in paragraph 1 thereof:

'All cross-border parcel delivery service providers other than those excluded by Article 4(6) and (7) shall provide the [NRA] of the Member State in which they are established with the public list of tariffs applicable on 1 January of each calendar year for the delivery of single-piece postal items, other than items of correspondence, falling within the categories listed in the Annex. That information shall be provided by 31 January of each calendar year.'

14 Article 6 of Regulation 2018/644, entitled 'Assessment of cross-border single-piece parcel tariffs', provides:

'1. On the basis of the public lists of tariffs obtained in accordance with Article 5, the [NRA] shall identify, for each of the single-piece postal items listed in the Annex, the cross-border tariffs of the parcel delivery service provider that originates in its Member State and that are subject to a universal service obligation that the [NRA] objectively considers necessary to assess.

2. The [NRA] shall objectively assess, in accordance with the principles in Article 12 of Directive 97/67/EC, the cross-border tariffs identified under paragraph 1 in order to identify those cross-border tariffs that it considers to be unreasonably high. In that assessment, the [NRA] shall in particular take into account the following elements:

(a) the domestic and any other relevant tariffs of the comparable parcel delivery services in the originating Member State and in the destination Member State;

…'

15 Article 7 of that regulation, entitled 'Information to consumers', provides:

'For contracts falling within the scope of Directive 2011/83/EU, all traders concluding sales contracts with consumers that include the sending of cross-border parcels shall, where possible and applicable, make available, at the pre-contractual stage, information about the cross-border delivery options in relation to the specific sales contract and charges payable by consumers for the cross-border parcel delivery, as well as, where applicable, their own complaints handling policies.'

16 Article 9 of that regulation, entitled 'Confidentiality', provides:

'Any confidential business information provided in accordance with this Regulation to [NRAs] or to the Commission shall be subject to strict confidentiality requirements under the applicable provisions of Union and national law.'

Italian law

– *Legislative Decree No 261/99*

17 Article 2(4) of decreto legislativo n. 261 – Attuazione della direttiva 97/67/CE concernente regole comuni per lo sviluppo del mercato interno dei servizi postali comunitari e per il miglioramento della qualità del servizio (Legislative Decree No 261 transposing Directive [97/67]) of 22 July 1999 (GURI No 182 of 5 August 1999), in the version applicable to the disputes in the main proceedings ('Legislative Decree No 261/99'), provides that the NRA in the postal sector:

'… shall carry out, with complete independence of assessment and decision-making, the following functions:

(a) regulation of postal markets;

(b) participation in the work and activities of the European Union and internationally, within the limits of its conferred powers;

(c) adoption of regulatory acts relating to the quality and characteristics of the universal postal service referred to in Article 12, including the determination of reasonable criteria to be applied to designate the points within the national territory necessary to ensure a regular and uniform provision of the service;

(d) adoption of regulatory acts on access to the postal network and related services, determination of tariffs for regulated sectors and promotion of competition in postal markets;

(e) carrying out of monitoring activities, supervision and verification of compliance with postal service quality criteria, including through third parties;

(f) oversight – also by having recourse to the territorial bodies of the Ministry of Economic Development – of the fulfilment of the obligations imposed on the universal service provider and of the obligations arising from licences and authorisations, in particular as regards the general terms and conditions for the provision of postal services;

(g) analysis and monitoring of postal markets, in particular with regard to the price of services, including the establishment of an observatory for that purpose.'

18 Article 14-*bis* of Legislative Decree No 261/99, entitled 'Information', provides:

'1. Postal service providers shall be required to submit to the [NRA], in confidence where necessary, within the timescales and to the level of detail required, all the information, including financial information and information concerning the provision of the universal service, that is necessary for the following purposes:

(a) to ensure compliance with the provisions of this decree and the decisions made pursuant to this decree;

(b) for clearly defined statistical purposes.

2. The [NRA] shall provide the … Commission with appropriate and relevant information necessary for it to carry out its tasks.

3. Where it considers the information referred to in paragraph 1 to be confidential, the [NRA] shall, in accordance with Community and national business confidentiality rules, ensure that it is treated as confidential.'

– *Decision 94/22/CONS*

19 The operative part of delibera n. 94/22/CONS recante 'Obblighi regolamentari nel mercato dei servizi di consegna dei pacchi' (Decision 94/22/CONS on 'Regulatory obligations in the postal parcel delivery services market') of 31 March 2022, of AGCOM, lays down the following obligations:

'Article 1

General obligations to provide information

1. Operators authorised … to provide postal parcel delivery services to the public, and which employ, for postal activities, at least 50 employees and have achieved, for at least three consecutive years, for postal services activities, as defined in Article 1(2)(a) of [Legislative Decree No 261/1999], an annual turnover exceeding EUR 10 million, shall provide each year to the Authority the information listed in the following paragraphs.

2. The operators referred to in paragraph 1 shall submit to the Authority information on the economic conditions of the services offered to the public, the publication of which is already mandatory under Article 5(1)(d) and (e) of Annex A to Decision 413/14/CONS. Operators shall also submit the reference economic conditions (average prices) for the following groups of business customers, defined on the basis of their annual turnover:

– more than EUR 1 million of annual turnover;

– EUR 250 000 < annual turnover < EUR 1 million;

– EUR 50 000 < annual turnover < EUR 250 000;

– EUR 5 000 < annual turnover < EUR 50 000;

3. The operators referred to in paragraph 1 shall submit to the Authority current contracts governing their commercial relations with undertakings in the sector that contribute to the provision of the postal service, with which they have contracted directly.

4. The operators referred to in paragraph 1 shall submit to the Authority a declaration regarding compliance with working conditions in respect of all persons involved in the provision of the service and at all levels of the network organisation.

5. The operators referred to in paragraph 1 shall submit to the Authority the standard contracts which they use for personnel belonging to various categories at all levels of the organisation.

Article 2

Specific obligations to provide information imposed on Amazon

1. In addition to the information listed in Article 1, Amazon shall submit to the Authority the following information:

(a) the average price charged to retailers who join Amazon's logistics programme (the "FBA") for the delivery service;

(b) the average unit price paid to DSPs [(Delivery Service Providers)] for the delivery service;

(c) the average unit price paid to other delivery operators for the delivery service.'

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

20 On 31 March 2022, AGCOM adopted Decision 94/22/CONS. By that decision, that NRA imposed on all medium-sized and large operators active on the parcel delivery services market the obligation to provide it each year with certain general information. In addition to that information, that decision imposed on the Amazon group companies specific obligations to provide information.

21 Those general obligations to provide information, which the referring court describes as 'symmetrical', apply to postal service operators which employ, for postal activities, at least 50 employees and have generated a turnover exceeding EUR 10 million for at least three consecutive years, for postal service activities. The general obligations to provide information concern:

– information on the economic conditions of the services offered to the public, the publication of which is already mandatory under a previous decision;

– reference economic conditions (average prices) for certain groups of business customers defined on the basis of their annual turnover;

– current contracts governing their commercial relations with undertakings in the sector governing their commercial relations with undertakings in the sector that contribute to the provision of the postal service, with which they have contracted directly;

– a declaration regarding compliance with working conditions in respect of all persons involved in the provision of the service and at all levels of the network organisation;

– standard contracts used for personnel belonging to various categories at all levels of the organisation.

22 The Amazon group companies must provide AGCOM with additional information. Those specific obligations to provide information are described by the referring court as 'asymmetrical'.

23 Decision 94/22/CONS was the subject of four actions for annulment before the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy).

24 The Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) upheld those four actions. In respect of three of them, brought by BRT, by FEDIT and by AICAI, DHL Express (Italy), TNT Global Express, Fedex Express Italy and United Parcel Service Italia, respectively, that court criticised, in addition to a lack of investigation, the lack of necessity and proportionality of the obligations to provide information described as 'symmetrical'.

25 As regards the fourth action, brought by the Amazon group companies, the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) considered that those companies did not carry on a cross-border activity and that there was therefore no 'certain' legal basis allowing AGCOM to impose obligations to provide information on them.

26 AGCOM brought an appeal against the judgments of the Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio) before the Consiglio di Stato (Council of State, Italy), which is the referring court, which joined the four cases in the main proceedings.

27 In the light of the grounds of appeal raised by AGCOM, the referring court questions the existence and scope of the legal basis that could justify AGCOM's powers to impose obligations to provide information such as those at issue in the main proceedings.

28 That court raises, first of all, the question whether, with regard to non-cross-border delivery service providers, such as the Amazon group companies, AGCOM has a legal basis for imposing such obligations to provide information.

29 That court's doubts in that regard are fuelled by the fact that, in its appeal, AGCOM claims that its powers derive, inter alia, from certain recitals of Directive 97/67 and Regulation 2018/644. That authority relies, in particular, on recital 51 of Directive 2008/6. According to the referring court, that fact could indicate the difficulty in identifying a bright-line rule which forms the basis of the powers exercised by AGCOM.

30 Next, as regards the scope of AGCOM's competence, the referring court asks what the limits of that authority's regulatory intervention are when it imposes general obligations to provide information. In that regard, that court observes that, Article 9(1) of Directive 97/67 authorises Member States, as regards services which fall outside the scope of the universal service, to introduce general authorisations to the extent necessary in order to guarantee compliance with the essential requirements. It wonders whether the obligations to provide information imposed by AGCOM can be justified by one of the essential requirements defined in the first paragraph of point 19 of Article 2 of that directive and whether they are proportionate.

31 As regards the latter aspect, the referring court notes that Article 14-*bis* of Legislative Decree No 261/99, which is intended to transpose Article 22a of Directive 97/67 into Italian law, provided, in respect of obligations to provide information, a general power which may be exercised on a case-by-case basis, giving reasons in each case for compliance with the principle of proportionality. AGCOM is thus empowered to request information from operators in order to carry out effectively the tasks entrusted to it by the EU legislature and the national legislature, by contacting each of the operators whose activities it considers to be relevant to the actual performance of those tasks, on the basis of specific requests and in relation to those tasks.

32 According to the referring court, the answer to the question of whether the abovementioned provisions also allow general obligations to provide information to be imposed or whether they constitute the legal basis for the exercise of the powers at issue in the main proceedings remains uncertain.

33 Lastly, the referring court notes that the adoption of Decision 94/22/CONS was justified, in the context of pro-competitive regulations, by the objective of avoiding or reducing the risk of distortion of competitive dynamics in the sector concerned.

34 In order, in particular, to improve competition and transparency in the interests of consumers and small and medium-sized undertakings and to deal effectively with competition problems arising in economic sectors where online platforms act as gatekeepers, AGCOM imposed on operators on the parcel delivery market obligations to provide information which, according to the referring court, go beyond those strictly linked to the protection of competition and of consumers. That court nevertheless wonders whether it is not necessary also to grant NRAs the power to verify how undertakings acquire and exercise their power and what the consequences of undue power could be, not only for consumers, but also for competitors in the sector concerned, workers and society in general.

35 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does [Regulation 2018/644], with regard to the collection of information, apply as such only to cross-border delivery service providers or, in general, to all parcel delivery service providers, subject to specific exclusions relating to individual provisions?

(2) If the answer to Question 1 is that it applies only to cross-border delivery service providers, does [Directive 97/67], or do the so-called “implied powers”, provide the legal basis for the [NRAs] to impose, in any event, on delivery service providers, even non-cross-border ones, general obligations to provide information?

(3) If the answer to Question 2 is [in the negative], must the fact that [Regulation 2018/644] does not apply to non-cross-border delivery providers be regarded as reasonable, non-discriminatory and in accordance with Articles 14, 114 and 169 of the Treaty on the Functioning of the European Union?

(4) To what extent (including from the perspective of necessity and proportionality) can the [NRA] impose obligations to provide information on parcel delivery service providers and, in particular, is it possible to impose, on all providers without distinction, obligations to provide information concerning:
(i) the conditions applied to different types of customers;

(ii) the contracts which govern the relations between the individual undertaking that provides the parcel delivery service and the undertakings which in various ways, according to the specificities of the sector, contribute to [the provision of] that service;
(iii) the economic conditions and the legal protection afforded to workers employed in various capacities [for the provision of] the service?'

Consideration of the questions referred

The first question

36 By its first question, the referring court asks, in essence, whether Regulation 2018/644 must be interpreted as applying, as regards the provision of information to the NRA concerned, only to cross-border parcel delivery service providers or, generally, to any parcel delivery service provider, except in the case of a specific exclusion.

37 As is apparent from its title, Regulation 2018/644 concerns cross-border parcel delivery services. However, it should be noted, in the first place, that the first sentence of Article 2 thereof provides that, for the purposes of that regulation, the definitions set out in Article 2 of Directive 97/67 are to apply. Regulation 2018/644 constitutes, as is apparent from Article 1 thereof, read in the light of recital 13 thereof, a supplement to that directive. Under point 1a of Article 2 of Directive 97/67, a 'postal service provider' is defined as an 'undertaking that provides one or more postal services'. That provision does not therefore distinguish between domestic and cross-border service providers.

38 In addition, under point 3 of Article 2 of Regulation 2018/644 a 'parcel delivery service provider' is defined as 'an undertaking that provides one or more parcel delivery services with the exception of undertakings established in one Member State alone, that only provide domestic parcel delivery services as part of a sales contract and as part of the contract personally deliver goods that are subject of that contract to the user'. Nor, therefore, can it be inferred from that provision that the EU legislature intended to cover only cross-border parcel delivery service providers, with the result that domestic parcel delivery service providers are all excluded a priori from its scope.

39 As is apparent from the wording of point 3 of Article 2 of Regulation 2018/644, which must be read in the light of recital 18 thereof, it excludes from that scope only a specific category of domestic parcel delivery services providers, namely undertakings established in a single Member State which make such deliveries only in order to fulfil orders of goods sold to consumers on the basis of contracts concluded between those undertakings and those consumers. That exception does not therefore apply to undertakings which use their domestic delivery networks to hand over goods which have been sold by third parties.

40 It follows that the exception provided for in point 3 of Article 2 of Regulation 2018/644 is limited in scope and does not mean that parcel delivery service providers are excluded from the personal scope of that regulation solely on the basis that they make deliveries only within the national territory of a Member State.

41 In the second place, it should be noted that Article 4 of Regulation 2018/644, which, as is apparent from its wording, specifically concerns the provision of information, applies, in principle, to all parcel delivery service providers, within the meaning of Article 2 of that regulation.

42 Article 4(1) and (3) of Regulation 2018/644 requires 'all parcel delivery service providers' to submit certain information to the NRA concerned. Article 4(2) of that regulation requires 'parcel delivery service providers' to communicate, within the specified time limit, any changes to the information requested under that Article 4(1), which means that that obligation covers the same category of providers as that concerned by the latter paragraph.

43 Thus, Article 4(3)(c) of that regulation requires those providers to submit the number of parcels handled over the previous calendar year in the Member State in which they are established, broken down into domestic and cross-border parcels. The fact that domestic parcel delivery service providers can submit information to the NRA only in relation to domestic parcels does not therefore mean that they must be regarded as being excluded from the scope of that regulation.

44 In addition, Article 4(5) of Regulation 2018/644, which allows the NRA to request additional information, expressly refers to paragraphs 1 and 3 of that article, as a result of which those requests may be addressed to the same recipients, namely all parcel delivery service providers, within the meaning of Article 2 of that regulation.

45 Although Article 4(6) of Regulation 2018/644 provides for the exemption of certain categories of providers of those services from the obligations referred to in paragraphs 1 to 5 of that article, that exemption applies only to small parcel delivery undertakings carrying out domestic deliveries, and provided that they are established in a single Member State. Moreover, Article 4(7) of that regulation allows an NRA to request, under certain conditions, information from certain service providers covered, in principle, by paragraph 6 of that article.

46 It is apparent from all those provisions that, irrespective of the territorial scope of the parcel delivery services provided, the parcel delivery service providers referred to in Article 4(1) of Regulation 2018/644 are, in principle, subject to the obligations to provide information imposed by that regulation.

47 In the third place, it should be noted, as observed by the European Parliament, that Regulation 2018/644 presents the system of regulatory oversight in Chapter II thereof as being composed of a series of interconnected steps. Thus, Article 4 thereof allows NRAs to obtain information in order to understand the composition and functioning of the parcel delivery market, both at domestic level and as regards cross-border deliveries. Under Article 5 of that regulation, NRAs are to receive public lists of tariffs from cross-border parcel delivery service providers. Pursuant to Article 6 of that regulation, NRAs are to identify the tariffs that they consider necessary to assess, and assess them. Lastly, Article 7 of that regulation requires, under certain conditions, traders who have sold to consumers goods that will be sent as cross-border parcels, to inform them, inter alia, of the cross-border delivery options and related charges.

48 The objective pursued by each of those provisions justifies the distinction which Regulation 2018/644 draws between the persons on whom the obligation to provide the information concerned falls. Certain obligations, which are more targeted in nature and function, are specifically aimed at cross-border parcel delivery service providers. Thus, Article 5 of that regulation applies only to those service providers, as it seeks to implement the objective of transparency of tariffs for cross-border parcel delivery already published. The relevant information in that regard can be obtained only from providers who supply such delivery

services. By contrast, other obligations such as the general information obligations set out in Article 4 of Regulation 2018/644 apply without distinction to parcel delivery service providers, irrespective of the territory on which those deliveries are made.

49 Accordingly, as the Advocate General observed in point 39 of his Opinion, the domestic or cross-border nature of the parcel delivery service is relevant, not for defining the personal scope of that regulation, but for determining the type of relevant information to be submitted in the light of the objective pursued by each of those provisions.

50 In the light of all of the foregoing considerations, the answer to the first question is that Regulation 2018/644 must be interpreted as meaning that it applies, as regards the provision of information to the NRA concerned, to any parcel delivery service provider, irrespective of whether the services concerned are domestic or cross-border, except in the case of a specific exclusion.

The second and third questions

51 As is apparent from their wording, the second and third questions are posed in the event that the answer to the first question would mean that Regulation 2018/644 applies, as regards the provision of information, only to cross-border parcel delivery service providers.

52 In view of the answer given to the first question, there is therefore no need to answer the second and third questions.

The fourth question

53 By its fourth question, the referring court asks, in essence, whether Articles 22 and 22a of Directive 97/67 and/or Article 4 of Regulation 2018/644, read in the light of the principle of proportionality, must be interpreted as precluding an NRA from imposing on parcel delivery service providers general obligations to provide information, concerning, in particular, (i) the conditions applied to different types of customers, namely the public and certain business customers, (ii) the contracts which govern the relations with undertakings which, in various ways, contribute to that provision of services and (iii) the economic conditions and the legal protections afforded to workers employed in various capacities for that provision of services.

54 In that regard, first, it should be noted that, as is apparent from Article 22a(1) and (2) of Directive 97/67, that provision requires Member States to ensure that postal service providers provide NRAs, at the request of those NRAs, with all the information, including financial information and information concerning the provision of the universal service, in particular, so that those NRAs can ensure conformity with the provisions of that directive or decisions made in accordance with it and for clearly defined statistical purposes.

55 Although Article 22a does not contain limitations as regards all the information that may be the subject of a request for information, in the light of the broad terms used in that regard, it should be noted that that information must be requested for the purpose of the performance of the tasks of the NRA concerned or for clearly defined statistical purposes. That interpretation is supported by the objective pursued by that provision, which is precisely, as stated in recital 51 of Directive 2008/6, to enable NRAs to gather information from market players ‘in order to carry out their tasks effectively’. It follows that the NRA’s power to request information from postal service providers in accordance with Article 22a of Directive 97/67 is delimited according to the tasks entrusted to it.

56 As is apparent from Article 22(2) of Directive 97/67, those tasks consist, in particular, of ensuring compliance with the obligations arising from that directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service.

57 Second, Article 4(1) and (3) of Regulation 2018/644 lists the information that all parcel delivery service providers must submit to the NRA concerned. That information concerns, inter alia, the characteristics of the parcel delivery services they offer, their general terms and conditions, the number of parcels handled per year, the number of employees, the names of their subcontractors and any information that they hold concerning the characteristics of parcel delivery services provided by those subcontractors, or, as the case may be, any publicly accessible price list applicable.

58 In addition, under Article 4(5) of Regulation 2018/644, an NRA has the power to impose additional information requirements.

59 It is apparent from the abovementioned provisions that both Directive 97/67 and Regulation 2018/644 permit the conferral on an NRA, for the purpose of the performance of its tasks, of a broad discretion as regards the type or volume of information which it may require from parcel delivery service providers, whether concerning the matters to which that information must relate, its public or confidential nature, or the frequency with which it may request that information.

60 It is important to note, however, that that broad discretion must be exercised in accordance with the principle of proportionality.

61 First, the possibility of requesting additional information under Article 4(5) of Regulation 2018/644 is subject to the condition that such a request is 'necessary and proportionate'.

62 Second, the second sentence of Article 22a(2) of Directive 97/67 provides that the information requested by the NRA must be proportionate to the performance of its tasks. Recital 51 of Directive 2008/6, in the light of which Article 22a of Directive 97/67 must be read, states in that regard that requests for information from an NRA must be proportionate and not impose an undue burden on the undertakings concerned.

63 In that context, it should, moreover, be noted that, under the second sentence of the first subparagraph of Article 22(2) of Directive 97/67, NRAs may be charged – in addition to the tasks imposed by that directive, such as the establishment of monitoring and regulatory procedures to ensure the provision of the universal service – with a task which Member States have the power to entrust to them, namely with ensuring compliance with competition rules in the postal sector. As is apparent from that provision, the harmonisation achieved by Directive 97/67 is only partial and leaves Member States free to adopt other provisions in that area, which could, where appropriate, entrust the NRAs concerned with additional tasks.

64 In that regard, it should be observed that, as the Commission pointed out, in essence, at the hearing, the power to regulate markets *ex ante* in order to promote competition is distinct from the powers to ensure compliance with competition rules, which entails the *ex post* application of the established competition rules, which takes place in specific cases. It follows that that *ex post* application of competition rules may justify a targeted request for information, focused on the specific ongoing investigation, whereas the objective of promoting competition may justify a broader request for information, which allows the NRA, entrusted with such a task, to examine

the market concerned in order to improve competition in a forward-looking manner. Thus, a thorough knowledge of the market, relating, in particular, to the power of certain operators active on that market, the prices of certain services and the working conditions which could compromise the level playing field on that market, may reveal the need to adopt regulatory measures in order to avert a risk of distortion of competition in the sector concerned.

65 It is for the referring court to rule on the proportionality of the obligations to provide information at issue in the main proceedings. It should be borne in mind that Article 267 TFEU does not empower the Court to apply rules of EU law to a particular case, but only to give a ruling on the interpretation of the Treaties and on acts adopted by the EU institutions, bodies and agencies. However, in accordance with settled case-law, the Court may, in the framework of the judicial cooperation provided for by that Article 267 TFEU and on the basis of the material in the case file, provide the national court with an interpretation of EU law which may provide it with all necessary information with a view to offering guidance in its determination (judgments of 19 September 2024, *Booking.com and Booking.com (Deutschland)*, C-264/23, EU:C:2024:764, paragraphs 45 and 46 and the case-law cited, and of 10 March 2022, *Landkreis Gifhorn*, C-519/20, EU:C:2022:178, paragraph 47 and the case-law cited).

66 To that end, in the present case, the referring court will have to assess, first of all, whether the obligations to provide information imposed by AGCOM are such as to enable the objective pursued by the NRA to be achieved, namely to ensure the performance of its tasks, next, whether those obligations are necessary in order to achieve that objective and, lastly, whether those obligations are proportionate, in particular in so far as, owing to the administrative burden which they entail, they do not unduly affect the rights and protected interests of parcel delivery service providers.

67 In that regard, it should be noted that only the 'symmetrical' obligations to provide information imposed by AGCOM are the subject of the fourth question referred for a preliminary ruling. According to the referring court, those obligations concern the conditions applied to different types of customers (fourth question, point (i)), the contracts which govern the relations between the undertaking that provides the parcel delivery service and undertakings which, in various ways, according to the specificities of the sector, contribute to the provision of that service (fourth question, point (ii)), the economic conditions and the legal protections afforded to workers employed in various capacities for the provision of the service (fourth question, point (iii)). Subject to verification by the referring court, the obligations referred to in point (i) of the fourth question correspond to those laid down in Article 1(2) of Decision 94/22/CONS, those referred to in point (ii) of the fourth question correspond to those laid down in Article 1(3) of that decision and those referred to in point (iii) of the fourth question correspond to those laid down in Article 1(4) and (5) of that decision.

68 It should be noted, in the first place, that, in so far as the information requested falls within the categories of data referred to in Article 4(1) to (3) of Regulation 2018/644, the referring court does not put forward any evidence capable of calling into question the proportionality of the related obligations imposed by that regulation, the validity of which, in that regard, was not mentioned by that court, as the Advocate General observed in point 83 of his Opinion.

69 In that context, it should be noted that Article 4(3)(d) of that regulation requires all parcel delivery service providers to submit to the NRA the names of their subcontractors together with any information that they hold concerning the characteristics of parcel delivery services provided by those subcontractors, such as the arrangements for clearance and distribution of the parcel,

according to its weight or dimensions. It follows that, first, those characteristics do not relate to the working conditions of personnel employed by third-party entities, such as subcontractors, who contribute to the provision of those services, conditions which are the subject of the obligations to provide information laid down in Article 1(4) and (5) of Decision 94/22/CONS. Second, only information which such a service provider actually holds is covered by Article 4(3)(d) of Regulation 2018/644. That obligation does not therefore imply that that service provider must collect additional information from its subcontractors.

70 It follows, in the second place, that information which does not fall within the categories of data listed in Article 4(1) to (3) of Regulation 2018/644 must be subject to an examination of the conditions governing the principle of proportionality. That applies, in particular, to information relating, as regards the relevant market, to the working conditions of the employees of the service providers or their subcontractors and to information relating to the factors which determine the price and quality of the services concerned.

71 As regards, first, the ability of the requested information to enable the NRA to perform its tasks, it should be recalled that, in accordance with Article 22(2) of Directive 97/67, NRAs are to have as a particular task ensuring compliance with the obligations arising from that directive, in particular by establishing monitoring and regulatory procedures to ensure the provision of the universal service.

72 Under Article 9 of Directive 97/67, Member States may make the provision of postal services subject to a general authorisation or an individual licence, while making the granting of authorisations subject to compliance with certain conditions concerning, inter alia, respect for working conditions laid down by national legislation.

73 It is apparent from the order for reference that the ‘symmetrical’ obligations to provide information at issue in the main proceedings are imposed on undertakings which provide parcel delivery services as holders of an individual licence or general authorisation. It is not specified whether or not the parcel delivery services provided by those undertakings fall within the scope of the universal service. Thus, BRT states in its written observations submitted to the Court that its services do not fall within the scope of the universal service.

74 In that regard, it must be observed that the Court has held that it is clear from an analysis of the overall structure of the second subparagraph of Article 9(2) of Directive 97/67 that the term ‘authorisations’, as used in that provision, applies both to the authorisations referred to in the first subparagraph of Article 9(2)and to the authorisations referred to in Article 9(1) of that directive, that is to say, the authorisations for services which fall outside the scope of the universal service and those which fall within its scope. Thus, in accordance with the fifth indent of the second subparagraph of Article 9(2) of that directive, all postal service providers, including those not providing services falling within the scope of the universal service, may be subject to the obligation to respect the working conditions laid down by national legislation (see, to that effect, judgment of 16 November 2016, *DHL Express (Austria)*, C-2/15, EU:C:2016:880, paragraphs 27 and 28).

75 Furthermore, it should be noted that, in the case of the provision of services falling outside the scope of the universal service, general authorisations may be granted, pursuant to Article 9(1) of Directive 97/67, to the extent necessary to guarantee compliance with the essential requirements for the provision of postal services. Those essential requirements are defined in point 19 of Article 2 of that directive. They include ‘respect for the terms and conditions of employment,

social security schemes, laid down by law, regulation or administrative provision and/or by collective agreement negotiated between national social partners, in accordance with Community and national law'.

76 It follows that information relating to working conditions, such as that requested by AGCOM under Article 1(4) and (5) of Decision 94/22/CONS, may be regarded as being such as to enable the NRA to carry out its task relating to monitoring the fulfilment of the obligations imposed on parcel delivery service providers who hold an individual licence or a general authorisation within the meaning of Article 9 of Directive 97/67.

77 As regards, second, the necessity of the information requested, that must be regarded as established if, in the absence of that information, the NRA cannot adequately carry out the tasks assigned to it.

78 As the Advocate General observed, in essence, in point 88 of his Opinion, the performance of the task of overseeing the fulfilment of the obligations arising from individual licences and general authorisations granted to parcel delivery service providers requires that the NRA has information relating to the working conditions of employees and the legal protections afforded to workers active in the provision of the services concerned. Thus, the obligation to submit the standard contracts concluded with those employees, at each level of the organisation, and to submit a declaration regarding compliance with working conditions in respect of the persons involved in the provision of the parcel delivery service such as laid down in Article 1(4) and (5) of Decision 94/22/CONS, do not appear to go beyond what is necessary to carry out that task effectively.

79 Similarly, the task of ensuring the provision of quality postal services, in particular the universal service, in the interests of the users of those services requires that it be possible to gather information on the factors which determine the price and quality of the services concerned or on the working conditions of the employees of the service providers present on the market concerned and of the persons involved in the provision of those services. As the Italian Government observed, in essence, in its written observations submitted to the Court, the recourse to outsourcing of the services concerned and the use of subcontracts, often in cascade leading to a very high fragmentation of the delivery phase, may render the economic and working conditions under which those services are provided less transparent. It follows that knowledge of the network's organisation is necessary to enable the NRA to oversee the market concerned effectively and, where appropriate, to intervene by adopting regulatory measures.

80 From that perspective, subject to verification by the referring court, the imposition of obligations to provide information relating to the working conditions of employees involved in the provision of the services concerned, the contracts which govern the commercial relations with undertakings that contribute to that provision of services and the prices and other conditions under which parcel delivery services are provided to the public and to specific business customers, such as those imposed by Article 1(2) to (5) of Decision 94/22/CONS, appears necessary in order to attain those objectives.

81 Third and lastly, it will be for the referring court to examine whether the information requested is proportionate, in particular in so far as it does not place an undue burden on parcel delivery service providers. That determination consists of an assessment of the burden imposed by the obligations to provide information that are at issue in the main proceedings in terms of time, and financial and human resources in the light of the size of the parcel delivery service providers which

are subject to those information obligations. It requires account to be taken of various factors, such as the time limits within which those obligations must be fulfilled, the nature and quantity of the information requested, and the degree of detail required.

82 Although such a determination is a matter for the referring court, in accordance with the case-law referred to in paragraph 65 above, it may be observed that, in so far as the provision of standard contracts enables the requested information to be provided to the NRA, it would be excessive to require parcel delivery service providers to submit all current contracts which govern the relations between the operator authorised to provide parcel delivery services to the public and its employees and the persons involved in that provision of services.

83 Furthermore, even if data such as the prices negotiated with business customers, which in the present case are covered by the obligation to provide information imposed by Decision 94/22/CONS, constituted, for parcel delivery service providers, sensitive business information, it must be borne in mind that the strict confidentiality of confidential business information provided by parcel delivery service providers must be ensured in accordance with Article 9 of Regulation 2018/644 and Article 22a(2) of Directive 97/67. Thus, by ensuring that those data do not have to be anonymised by those providers, which would entail a significant administrative burden for them, it appears that the EU legislature weighed up, on the one hand, their interests in exercising the freedom to conduct a business guaranteed by Article 16 of the Charter of Fundamental Rights of the European Union and, on the other hand, those of an NRA to obtain that information for the purpose of the performance of its tasks.

84 In the light of all of the foregoing considerations, the answer to the fourth question is that Articles 22 and 22a of Directive 97/67 and Article 4 of Regulation 2018/644 must be interpreted as not precluding an NRA from imposing on parcel delivery service providers general obligations to provide information, concerning, in particular, (i) the conditions applied to different types of customers, namely the public and certain business customers, (ii) the contracts which govern the relations with undertakings which, in various ways, contribute to that provision of services and (iii) the economic conditions and the legal protections afforded to workers employed in various capacities for that provision of services, provided that the obligations imposed are such as to enable the performance of the tasks assigned to that authority, that they are necessary for that purpose and that they are proportionate in that they do not place an undue burden on those service providers.

Costs

85 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby rules:

1. **Regulation (EU) 2018/644 of the European Parliament and of the Council of 18 April 2018 on cross-border parcel delivery services**

   must be interpreted as meaning that it applies, as regards the provision of information to the national regulatory authority concerned, to any parcel delivery service provider, irrespective of whether the services concerned are domestic or cross-border, except in the case of a specific exclusion.

2. **Articles 22 and 22a of Directive 97/67/EC of the European Parliament and of the Council of 15 December 1997 on common rules for the development of the internal market of Community postal services and the improvement of quality of service, as amended by Directive 2008/6/EC of the European Parliament and of the Council of 20 February 2008, and Article 4 of Regulation 2018/644**

must be interpreted as not precluding a national regulatory authority from imposing on parcel delivery service providers general obligations to provide information, concerning, in particular, (i) the conditions applied to different types of customers, namely the public and certain business customers, (ii) the contracts which govern the relations with undertakings which, in various ways, contribute to that provision of services and (iii) the economic conditions and the legal protections afforded to workers employed in various capacities for that provision of services, provided that the obligations imposed are such as to enable the performance of the tasks assigned to that authority, that they are necessary for that purpose and that they are proportionate in that they do not place an undue burden on those service providers.

[Signatures]