

The EU's policy towards economic  
freedom in the flow  
and providing mailing services

# **The EU's policy towards economic freedom in the flow and providing mailing services**

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Quantity printed:

**100 copies, 10 printed sheets**

Publisher:

**Alcide De Gasperi University of Euroregional Economy in Józefów**

05-410 Józefów, 4 Sienkiewicza Str.

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**ISBN 978-83-62753-67-3**

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Warsaw 2016

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## Introduction

There have been or there are public enterprises (or private ones) bearing real monopoly of activity in certain areas in numerous EU's member states. It concerns especially services of common character such as mailing services. Monopoly itself is not economically justified; it leads to high prices in most cases, low quality of services and technological delay (Kowalski and Ślusarczyk 2010, p. 208). Mailing services have been a subject of anti-monopoly policy realized by the European Union for years. Many experiments of the EU's anti-monopoly policy remain in central authorities' competences. It favors to development of competition since it does not include regulations founding particular exceptions or exemptions from using as below: (i) general competition law; (ii) limits concerning horizontal cartels; (iii) limits concerning vertical relations and abusing a dominant position and; (iv) limits within performing fusions. In case of mailing services, one should still speak about occurring regulation barriers connected with access. Competition is still limited in the sector of mailing services as regards letters. Although mailing services are principally open for competition in the part concerning parcels and telecommunication. Maintaining high standards is of significant importance but it should be cared that it would not lead to blocking possibilities of development of enterprising companies and causing high prices and limited supply of important services (*Small and medium enterprises and entrepreneurship policy* 2012, p. 103).

The increase of competition intensification is one of the clearest and most obvious trends of current economy development. Economic globalization, fading geographical borders causes that aggressive competitive actions reach for the markets so far monopolized or those of stabilized competitive reality. Competitive challenges must be appreciated even in still monopolized sectors of economy as mailing. Ignoring new, global competitive challenges in the area of education or retail trade would be risky as well. The power of competition grows together with fading barriers between sectors. A producer of electronics has not competed with camera manufacturers until not so long ago, and nowadays Sony is becoming head rival of Kodak and Apple to Nokia. Contemporary information

technologies or modern financial instruments significantly lower barriers to enter any sectors.

Today, it is not a problem to allocate another electronic bank on a market or any virtual travel agent's. Implementing another mailing service operator on the European markets is also possible. It all causes that today's phase of economic development may be called hyper-competitive phase, "brutality" of competition that reaches everywhere with more and more power. The ability to satisfy competitive challenges is a condition of success for each enterprise but also surviving especially in the longer time perspective (Lachiewicz and Majetun 2009, p. 31 and next).

Due to further opening mailing services of the EU to competition, the fact that such services are performed via networks by ordering institutions, public enterprises and other enterprises, the order granted by ordering entities performing mailing services should guarantee using the principle of equal treatment, indiscriminability, mutual recognition, proportionality as well as the principle of transparency which create basis for proper trade practice and enable bigger flexibility (Kowalczyk and Szymańska 2011, p. 183).

Therefore, conducting competitive actions in the operational dimension only is becoming more and more difficult and risky with the time being. The strategy of competition, namely the model of development serving to creation of long-term prevails towards any entities of a competitive environment is necessary. In this case, changing time perspective in competitive actions from the current into the perspective one is particularly significant. Although, in the time of dynamically developing and unpredictable conditions to compete, designing any actions for future seems very difficult but it is apparently necessary. In other way, it is impossible to create a company's uniqueness so significant and hard to be copied. It is time consuming; it demands systematical actions and consequence. However, an enterprise which may not differ from environment significantly may result in failure. Omitting a long term perspective in competitive actions also means drifting after escaping rivals. Taking over a strategic initiative, imposing competitive rules instead of adjusting to the binding ones, demands prediction, foreseeing future because only in such a perspective, new opportunities may be noticed and competition may be overtaken in reaching them (Lachiewicz and Majetun 2009, p. 32).

The public operator is obliged to provide common mailing services in a constant way. The verdict of the Voivodship Administrative Court in Gdansk from March 5<sup>th</sup>, 2009 I SA/Gd 369/08, LEX No 5005757 provides an important guideline with the interpretation to common mailing services where the court explained that “according to art. 3 par. 12 of the mail law, a public operator means an operation obliged to provide common mailing services”. The above means that a given entity is a public operator if it provides common mailing services and it is obliged to provide such services which results from the legal regulations. Separately from the Court interpretation, InPost which is a competitive company to Poczta Polska provides services that are not of a common character, the company decided to perform activity voluntarily and with the profit making objectives, and the activity is continued by the company on the same principle. It means that the company may resign from performing economic activity at any time because the only entity which is obliged to provide mailing services pursuant to the law is Poczta Polska. Pursuant to art. 46 par. 2 of the mail law, “the obligation to perform tasks of a public operator determined in the act was entrusted to Poczta Polska, on the basis of exclusion” (Kowalczyk and Szymańska 2011, pp. 185-187). The cited situation generally highlights the problem of public mailing services not only in Poland but also in other EU’s member states.

This book is a compendium of information concerning the market of mailing services in Europe, valued via the prism of the experiences of the Polish market. Chapter one presents the most important determinants of entrepreneurship freedom within the EU. That part of the book includes characteristics of free trade and freedom of performing services and the EU’s entrepreneurship as well as their limits in that matter. The characteristics of the EU’s policy concerning unanimous internal market played a significant role as well.

Chapter two concerns the EU’s genesis of the mailing service market. The structure and areas of the mailing service market and the messenger service market were characterized. There is also a presentation of the EU’s policy towards the competition on the mailing service market with special consideration of the role of a national operator obliged to provide common services.

Chapter three focuses on employment policy in mailing services. There are work determinants while realizing mailing services with consideration of flexible forms of employment in the European Union in the context of mailing services. The correlation between work time of an employee in mailing services and the amount of remuneration of and fees for standard letters was presented as well.

Chapter four includes an analysis of mailing services and their rationing by the prism of the EU's and the Polish laws. The factors influencing the quality of mailing services and legal regulation in that matter were also characterized. There is a process of liberalization of the EU's mailing service market with special consideration of the Green Book concerning the development of a unanimous mailing service market and the directives on common rules.

Chapter five characterizes international legal aspects of mailing services. There is a presentation of the influence of the World Mailing Association on shaping mailing service standards and member states on the development of the mailing service market. Financial and accounting aspects of the EU's public mailing operators' activity are a significant issue in this part.

Chapter six presents contemporary changes that have occurred on the mailing service market including regulation aspects of fees for common services, economic accessibility of services and estimated incomes of the EU's selected operators.

CHAPTER 1

# **Freedom of entrepreneurship within the European Union**



# 1. Free trade

Trade enhances the areas with competitive prevail to produce just those products while others may produce what they are able to manufacture the cheapest. It lowers prices for everyone. It also helps poorer countries that often have many people able to perform tasks cheaper than workers from richer countries. Politicians complain about moving work places from the USA to India but it helps decrease poverty in India and lower process for everyone (Sitek, 2007, p. 21).

Therefore, what is wrong in contemporary international trade systems? Industrial countries have shaped it in order to bring economic profits just for them. One of the most often used books of economic development claims: “obviously rich countries benefit from the world trade disproportionately much” (Michael and others 2003, p. 544).

In the colonial Times „native” countries regularly cared for economic matters to be favored for them. Those benefits were usually reached by manipulations in goods trade. Western colonial countries adopted the rules that enlarged the amount of goods received from colonies and simultaneously discouraged colonies to develop re-processing abilities. In the result, many colonies remained in unnecessary dependence and were forced to import basic products and purchase expensive goods from their “native” countries. Although colonialism ended, several dozen years ago, industrial countries still manipulated the international trade through implementing high customs and import limits in order not to let many goods produced in the less developed countries. Those limits towards poor countries are one of fundamental aspects of the system injustice nowadays (Sider 2008, p. 187 and next).

Freedom of trade and industry is spreading on whole actions within performing own economic activity. On the basis of numerous verdicts of the Supreme Federation Court, there may be a large number of elements of the mentioned constitutional freedom. Those are in particular: free choice of profession and its performing, choice of education place, choice of working activity or workplace in case of those not self-employed, choice of time and place of such an activity, freedom of employees' selection, freedom of substantial measures to perform economic activity, freedom of shaping economic relations with other entities, freedom of selection of organizational

form of the activity, freedom of moving throughout the whole Swiss Federation as well as freedom of advertising (Vallender 1991, p. 47).

Also freedom of economic entities associations are treated is treated freedom of trade and industry. Undoubtedly, the freedom refers to creating relationships of private and legal character, e.g. establishing companies. In Switzerland, organizations of private and legal character based on obligatory association of entrepreneurs are principally forbidden. The Supreme Federal Court accepted however to create obligatory doctors' associations justified by administrative police matters, i.e. public safety. But obligatory entrepreneurs' organization motivated by economic policy matters would not be in agreement with the Federal Constitution unless the constitution allows exceptions from the economic freedom principle in some areas, e.g. agriculture (Vallender 1991, p. 50).

Economic freedom does not mean "freedom from competition" from other entrepreneurs both private and public ones. It is however adopted that economic activity of a state may potentially collide with freedom of industry and trade comprehended in an objective way, namely not as a substantial law guaranteed by the constitution but as a constitutional expression of a state economic system. That system is based on private ownership and market economy and characterizes with the competition of private entrepreneurship, not central management by a state (Häfelin and Haller 1988, p. 421).

The collision mentioned above may occur if a state activity in the discussed matter was developed so much that it would undermine the basis of economic system. Such a danger does not occur in practice (Krähenmann 1987, p. 163).

Competition policy is one of the most and earliest agreed EU's policies. Common competition policy is supposed to guarantee not implementing new barriers leading to deform competition after abolishing barriers in trade. The competition policy also serves consumers and enables increasing the EU's economic competitiveness on the world's markets (*Vademecum – the sources of information concerning the European Union* 2004, p. 100).

The European Union did not implement the VAT system that is common for all member states until 1978. Partial abolition of tax barriers

occurred in 1993. Recently, there has been legal and political engagement of the European Commission and member states in establishing common VAT system according to which there have been changes within taxing and internal EU's sale has been classified in detail. "The final system" assumes abolition of the obligation of paying tax in a member state of destination (*Combating VAT fraud in the EU the way forward* 2007, p. 11).

It may be said that common trade policy, in the external part, makes a coordinative element of economic policies of member states and, to certain extent, common foreign policy, included in art. 228a of the Treaty of Maastricht "for the EU's actions terminating or decreasing partially or fully economic relationship with one or more of the third countries". Therefore, economic foreign policy is going to be led autonomously by particular EU's member states. In the mentioned Treaty of Maastricht indeed includes the readiness to perform common foreign policy but in the context of supporting peace, safety and progress in Europe and in the world. However, in the added art. 3a, realization of economic policy based on strict coordination of the EU's economic policies is mentioned. In art. 103 par. 3, the way of the coordination is supposed to be provided and constant concurrence of economic action of those states. On the basis of art. 238 of the treaty, the EU may conclude agreements of association with the third countries and international organizations which, as practice shows, go beyond purely trade regulations and overwhelm elements of economic and social policies (Ciamaga and others 1998, p. 107).

Market is one of the main and economically the most effective mechanism regulating economies. It is not, however, a completely perfect system. There are certain disabilities which demands corrections. A state is an entity that may partially correct or complete a market economy. The cause of such state actions is providing goods that are not provided by market itself or the correction of a national income division. The basis of the intervention is the premises of economic or social character. Market and a state are complementary regulating systems of multi-aspect economy whose one of the most factors is price in an international exchange (Biernat and Wasilewski 2000, p. 178).

The significance of foreign trade for economies of particular countries is not similar. The highest relation between export and national gross product

is reached first of all by developed countries with relatively small number of population. Whereas, in countries with very big sales market, both developed and developing ones, the relation is much lower. In general, the rule has two causes. The first, the most important one, means relatively higher significance of foreign market for producers from small not large spheres. The other, less important factor influencing the less relation between a big country and foreign trade is often less dependence from foreign supplies of raw materials and food. Countries of large size generally have more diverse geological shape which increases opportunities to occur significant raw material resources moreover, they provide bigger size of agricultural lands necessary to develop agricultural production (Budnikowski 2001, p. 25).

The relation of the national gross product to export of a given country does not depend exclusively on the size of a given market. In many cases, the dependence is corrected by the action of other factors: a level of economic development, strategy of development, size of natural resources, geographical location or historical causes as well as fiscal policy. The possibility of a given country to benefit from participation in an international exchange depends on its international competition, namely ability to manufacture and sales goods and services on foreign markets that are cheaper and/or better than those offered by other countries (Carbaugh 1995, p. 10).

Harmonization of taxes also plays an important role in free trade (or their homogeneity) which is connected with international economic integration. At the beginning of 1970's it was described as coordination in the Western Europe. The notion had numerous meanings and it overwhelmed: consultations between two or more countries, agreement concerning implementing similar taxes, arrangements concerning a kind and sizes of tax dues. In general, tax harmonization means a compromise between a low level of coordination and an ideal level of standardization (the same tax system, very similar tax basis and rates). The European Union's states have the biggest experiences and results in that matter. Tax harmonization is connected with homogeneous law within the EU which does not aim at eliminate national legal systems. Discrepancies are removed only in those areas which are important for integration processes. The adopted legislative methods serve to such proceedings. The princi-

ple of realization of directives means that only the objectives are established together but they are performed pursuant to the national legislation (Brzeziński and next 1998, p. 16).

## 2. Freedom of providing services

Undertaking and performing economic activity is free for everyone, on equal rights preserving conditions regulated by the law. The notion of economic freedom is comprehended in the doctrine as freedom connected with economic activity which is expressed in the following freedoms: undertaking economic activity, performing economic activity, choice of legal and organizational form of performing economic activity competition with other entrepreneurs, selling own goods and services, deciding on prices and time of employment, deciding on the way of capital engagement, the way of performing economic activity, change it profile, time of its lasting, etc. (Cioch and Kidyba 2007, p. 106 and next).

Economic factors contribute to legitimization in the legal systems of states, a state involvement into market and social processes. It is expressed by constitutional norms of those countries referring to the economic and social issues. They shape an economic system of a given state as well as the range of its task and intervention connected with it.

Treating national entities equally with those coming from the other EU's countries remains a rule within the freedom of providing services. Certain restrictions within treaty regulations refer to financial services. The freedom of providing services is included to that sphere of legal activity of the EU that did not concern in full the principle of direct use in legal orders of particular member states. The exceptions from the principle of direct effectiveness of liberal provisions overwhelmed, pursuant to art. 58 TEUF, a sphere of transportation banking and insurance services. There is a necessity to liberalize the acts of secondary legislation together with dependence of its pace on liberalization of freedom of capital flow (in relation to insurances and banking) (Góral 2011, pp. 33-35).

The European Union has supported the declared aims to lower costs of establishing new economic entities and removing bureaucracy barriers disturbing entrepreneurship development, especially the small and medium ones, since adopting the Lisbon Strategy (Sitek M., 2012, pp. 2011-220). Consequently, it was declared for abolishing any restrictions of free flow of people, goods, services and capital within the EU (Niedziółka, 2012, pp. 499-507). The attempts aiming at increasing competitiveness of the EU's economies and liberalization of the areas that remained under strong influence of a state (energy, transportation, mailing) were supported as well, decreasing state grants and facilitating tax systems (with simultaneous tax lowering) (Sitek, 2009, pp. 363-378). The social pillar of the Lisbon Strategy has been treated in a different way. The vision of economy functioning written in that document includes too many elements of a state of wealth and ecological accents which, in practice, means excess of regulations, protectionism, grants and directives that would be decreasing instead of increasing economy competitiveness of a given country, therefore, competitiveness of the whole EU (Budny 2008, p. 178).

Due to direct realization of freedom of service providing which is strongly connected with the content of the remaining freedoms, including the freedom of undertaking economic activity in the biggest part, they were detailed in the derivative law regulations, i.e. directives regulating the activity of particular categories of financial market entities providing services on the area of its particular segments.

In practice, the freedom of providing services is similar to the freedom of entrepreneurship. Meanwhile, the freedom of entrepreneurship and the freedom of providing services exclude each other. A particular behavior may not be simultaneously classified as the undertaken one within using the freedom of entrepreneurship and the freedom of providing services therefore, it may not be protected together by the regulations referring to both freedoms. Whereas, similar behaviors may be qualified differently when there is a wider context of their performance.

While diversification of the freedom of entrepreneurship from the freedom of providing services, it is highlighted that the first one is characterized by "stability of activity" whereas the other one by "the temporary character of service". The requirement of "the stability of activity" does

not result directly from the art. 43 of the TEU in the Polish language version. The Court of Justice referred to that element characterizing the freedom of entrepreneurship many times, simultaneously specifying the range of that notion. It agreed that if an activity is of stable character or if it has not presumed end of its lasting, it is not included in the regulations concerning services but then, the regulations concerning the freedom of entrepreneurship may be used. Temporary character of an activity ought to be evaluated with consideration of not only time of the service providing but also frequency, regular recurrence and stability. A temporary character of services does not exclude from a service provider to be equipped in a stable infrastructure, pursuant to the TEU, in the adopting member state (including offices, apprenticeship places, legal offices) as long as such an infrastructure is necessary to provide services. However, if a member state citizen provides professional activity in another member state constantly, within which there are contacts with the citizens of that state from own country, he/she is the subject of the regulations from the chapter “the law of entrepreneurship” not “a service” (the verdict of the Court of State from November 30<sup>th</sup>, 1995 on C-55/94 Reinhard Gebhard versus Consiglio dell’Ordine degli Avvocati e Procuratori di Milano, see decision 1995, p. I-4165, par. 27).

Writing about the relation between the freedom of entrepreneurship and the freedom of providing services, it should be mentioned about the Directive 2006/123/WE of the European Parliament and Council from December 12<sup>th</sup>, 2006 concerning services on an internal market (Journal of Laws L376 from December 27<sup>th</sup>, 2006) whose regulations were supposed to be implemented in the member states until December 28<sup>th</sup>, 2009. What is important, the act aims at removing barriers not only in the free flow of services between the member states but also in the freedom of entrepreneurship for service providers in the member states. Those barriers may not be removed, according to the directive creators, only basing on direct use of art. 43 and 49 of the TEU because, on the one hand, undertaking actions in particular cases on the basis of the procedure of regulation infringement by the member states would be very complicated from the point of view of national and EU’s institutions, on the other hand removing many barriers demands previous coordination of national

legal systems including administrative cooperation. Thus, it was necessary to adopt the Directive 2006/123/WE which was supposed to guarantee service receivers and service providers legal certainty necessary to perform in practice two basic freedoms written in the treaty. The interpretation of that act influenced comprehending the freedom of entrepreneurship and the freedom of providing services as well as mutual relations between them (Cejmer and others 2008, p. 38 and next).

### **3. Economic freedom as the EU's objective**

Economic activity has a character of profit making trade and service activity performer in an organized and stable way. Commercial enterprises perform economic activity basing on trade principles act on the rules of competition and aim at maximum profit (Koch and Napierała 2006, p. 257).

Economic freedom constitutes so called substantial law of a „negative” character. There is a principle adopted within performing an economic activity, namely everything is allowed which is not forbidden. According to the Court however, economic freedom (also the freedom of performing an economic activity), does not have an absolute character, its limiting is allowed in the way of an act due to an important public interest, pursuant to art. 22 of the Polish Constitution from April 2<sup>nd</sup>, 1997 passed by the National Assembly on April 2<sup>nd</sup>, 1997, adopted by the People in the constitutional referendum on May 25<sup>th</sup>, 1997, signed by the Polish President on July 16<sup>th</sup>, 1997 (Journal of Laws 1997 No 78 pos. 483 with later amendments). Full freedom of economic activity in any areas could threaten not only to a state and citizens' safety but also a public order. Any restrictions to the principle of freedom of performing economic activity have a character of exception and may not be treated in a widening way, therefore they may not be comprehended, presumed or adopted analogically (Lipski and others 2007, p. 27). An example of the economic freedom as the EU' objective is the Polish Act from July 2<sup>nd</sup>, 2004 on the freedom of economic activity (Journal of Laws 2004, No 173, pos. 1807 with later

amendments) which states that foreigner from the EU's member states and the EFTA member states, the parties of the agreement on the European Economic Area, may undertake and perform activity on the same basis as the Polish entrepreneurs (Comp. Olszewki 2004, p. 8).

The above also refers to citizens from other countries who received residential permission on the territory of Poland, permission for tolerated stay, refugee status granted in the Republic of Poland or they use temporary protection on this territory. The remaining foreigners may undertake an economic activity only in the form of a company: limited partnership, joint-stock limited partnership, joint-stock company, limited liability company as well as join such companies or buy their assets or shares (Rymarczyk 2005, p. 50).

The act of the freedom of economic activity also describes the principles of establishing subsidiaries and representatives of foreign entrepreneurs in order to perform economic activity in Poland. The range of the activity of a representative may overwhelm only performance of an activity within advertisement, commercial and promotion of a foreign entrepreneur. The activity may begin after receiving the notice of the department into the register of entrepreneurs whose regulations are included in the Act from August 20<sup>th</sup>, 1997 on the National Judicial Register (Journal of Laws 2009, No 96, pos. 620). A foreign entrepreneur who established a subsidiary is obliged to (Rymarczyk 2005, p. 50):

- use an original name together with a translated name of the legal form of the entrepreneur into the Polish language and add the words “subsidiary in Poland”;
- keep a separate accounting books in the Polish language pursuant to the provisions on accounting;
- notify any amendments of the factual and legal state connected with foreign enterprise liquidation or the loss the right to perform a foreign activity to a proper minister for economic affairs.

The minister may decide on rejection to entry in the register is establishing a subsidiary threatened safety and defensibility of a state, protection of a state secret or other important public interest. Another reason may be extending in the application beyond an activity range concerning commercial and promotion or not attaching required documents

to the application. Both a foreign entrepreneur's obligations and circumstances which the decision on forbidding performing an activity with-in representativeness is issued on are almost identical to those that refer to foreign enterprises subsidiaries (Rymarczyk 2005, p. 51).

If a subsidiary does not fulfill the above mentioned conditions or if it infringes the Polish law or its activity threatens the Polish safety and defensibility or protection of the state secret or other important public interest, a proper minister for economic affairs issues a decision to forbid performing an economic activity by a foreign entrepreneur within a subsidiary. Issuing such a decision is equal with the obligation to begin a liquidation proceeding by the entrepreneur not later than within 30 days. The regulations of the Act from September 15<sup>th</sup>, 2000 the Code Commercial Companies (Journal of Laws 2009, No 104, pos. 860) concerning liquidation of limited liability companies are used.

Generally speaking, the main aim of economic integration is making maximum benefits from foreign trade and other forms of international cooperation within an integrating group. Those benefits acquire different shapes depending on the form of integration. In case of a traditional integration, developed according to the standards of traditional work division, a basic element of integration is liquidation of barriers limiting the exchange of ready goods and services within an integration group in the condition of simultaneous maintenance of those barriers in external relations. In both cases, an economic target of a vertical integration may be reached by making so called trade diversion effect or trade creation effect. Naturally, its time horizon is short (Bożyk and Misala 2004, p. 23).

The flow of money between the selected organizational units is not limited in typical national enterprise acting only on a local market. Decisions on distributing turnover capital within the existing enterprises or production subsidiaries are undertaken on the basis of final return rates and operational profits with relatively low engagement of own funds. With some exceptions, are also current assets subject to economic dislocation in a national enterprise are denominated in a local currency of a given country (Najlepszy 2007, p. 250).

The main motive to transfer production factors, work and capital between state borders is aiming at reaching a higher refund rate, namely

a higher remuneration in case of a labor factor, higher profit in case of allocated capital (Iskra 2000, p. 183).

International capital flows have close relations with economic activity of transnational corporations and with international production started by them. International production refers to that part of production of goods and services which is controlled and managed by companies seated in other countries. The companies from mother countries may perform controls over production in countries adopting foreign investments by possessing a minimum share in a company's capital or assets (Iskra 2000, p. 184).

In an international enterprise performing a global activity with the use of developed network of foreign subsidiaries located all over the world, the flow of funds naturally meets more serious difficulties. They result from interaction of such factor as diversification of tax systems, political risk and exchange rate risk (Najlepszy 2007, p. 250).

## **4. The EU's policy towards unanimous internal market**

The basis of dissertation over the issue of licenses for foreign entities coming from the EU's countries, including capital companies based on the law of another member state within economic activity performed in Poland in the context of community freedoms binding in the EU, including the freedom of entrepreneurship is art. 43 and 48 of the Treaty on founding the European Union from March 23<sup>rd</sup>, 1957 (TEU).

Moreover, the right to undertake an economic activity throughout another Member State should be also recognized in the light of substantial literature and verdict of the European Court of Justice.

The EU's policy towards a unanimous internal market is based on created principles of the freedom of entrepreneurship whereas the main freedom of entrepreneurship overwhelming the right to direct undertaking by entities from other member states, establishing and running enterprises assumes that it should be done with preservation of the conditions

agreed in the legislation of the country where the activity is undertaken. The primal freedom of establishing enterprises does not overwhelm however transferring the while company into another member state with preservation of its identity, since it is connected with tearing legal bounds with the country of its seat.

It is adopted that companies wishing to use the freedom of entrepreneurship as other entrepreneurs must decide on choosing the law of companies from any member state. The law influences either undertaking “primal” economic activity by establishing a new company or “secondary” economic activity, namely establishing subsidiaries, departments or agencies in another member state (Lipski and others 2007, p. 36).

Foreign persons from the EU’s member states, the EFTA member states, the parties of the agreement of the European Economic Area and foreign persons from the states not being parties of the agreement on the European Economic Area who may use the freedom of entrepreneurship on the basis of the agreements concluded by the states with the EU and its member states, may undertake and perform economic activity on the same basis as the Polish citizens. The entrepreneurs from EU’s member states, the EFTA member states, the parties of the agreement on the European Economic Area and entrepreneurs from the states which concluded the agreements regulating the freedom of providing services with the European Union and its member states, may temporarily provide services on the basis described accordingly in the Treaty founding the European Union (Journal of Laws 2004, No 90, pos. 864/2) or in the regulations of those agreements without the necessity to acquire an entry to the register of entrepreneurship or register of economic activity, mentioned in art. 14 (Buczna 2010, p. 301).

The effect of trade transferring is expressed in increasing the participation of the countries that belong to an integration association in their global trade for the cost of the participation of the third countries (not associated) outside associations (in the result of transferring from the sources of purchase of certain goods from the countries even with lower costs but remaining outside of an association). The source of the effect of transferring is variety of the scale of difficulty in the access to the market; barriers are removed inside an association however in the relations of its members with external states, they are still used. It results in the fact that goods produced

on a relatively higher price within an association are cheaper while bought by its members than those produced relatively cheaper but outside it since the prices of the latter ones also include the results of occurring customs and other barriers. The effect of trade creation is expressed in increase of volume of mutual trade turnovers of states participating in an integrating association due to removing customs and other barriers in the trade between them. Before establishing associations, particular countries satisfied the demands of the market by national production that had not met any competition from abroad. Imported goods including barriers were more expensive. Establishing an integrating association and, therefore removing barriers, caused that own production by more expensive manufacturers did not bring profits due to the opportunity to import cheaper goods from neighboring countries. As a result, comparative benefits increased and mutual trade within an association grew (Bożyk and Misala 2004, p. 24).

A global enterprise activity goes beyond a state border and it is not bounded to one native country. In global enterprises, market of many countries in the world is principally treated in a homogenous way and the whole company's operations performed in various countries are managed as one integrated system. A global company is a trans-national enterprise which overwhelms the whole world market with its range. A trans-national corporation is an organization which coordinates production and service activity (of different units in various countries) from one headquarters undertaking strategic decisions.

Therefore, it is not the resources ownership but an organized ability to coordinate and integrate various actions of units to perform the adopted strategy is considered nowadays a particular attribute of trans-national corporations (Stabryła and Małkusa 2012, p. 24). In literature, the "trans-national" notion is attempted to be explained as well, namely it means a way of performing, coordinating and controlling of activity in numerous countries, conducted in order to achieve competitive prevail. Globalization of activity on the level of an enterprise, particularly a trans-national corporation means integration of nationally spread functions and units performing them (Breński, Oleksiuk, 2008, p. 109). A functional integration means binding and coordinating actions in various organizational units (centers, subsidies, common ventures or other companies linked

with strategic alliances) located in many different countries. The attitude does not highlight control ownership but an organization, coordination and dominance of trans-national corporations in networks.

The TEU article states a ban for any agreements between enterprises which may influence trade between the member states pursuant to art. 81 of the Treaty Founding the European Union (Journal of Laws WE C 235 from December 24<sup>th</sup>, 2002). The agreements exist since the parties agreed to limit their trade freedom by establishing a proper policy of behavior. It also concerns informal agreements such as gentlemen's agreements. There is an impact between the member states if it is possible to predict, with a high probability of legal or factual circumstances that a given agreement may directly or indirectly, really or potentially influence the trade between the member states (Adamczak-Retecka and Hołub-Sniadach 2005, p. 126). There are two types of agreements. The horizontal ones, namely these concluded between producers of the same product and vertical ones concluded between a manufacturer and distributor of a given product. Such agreements are not forbidden indeed if they are of an internal character and do not influence the trade within the EU as well as such agreements whose influence is not significant. Simultaneously, it should be mentioned that the agreement aims at influencing the competition within a common market, and, to prove it, it is necessary to determine a particular aim of such an agreement in an economic context in which it shall be used (Case 56/65: Société Technique Minière (L.T.M.) v. Maschinenbau Ulm GmbH (M.B.U.), See verdict 1966, p. 235).

The member states are obliged to maintain databases on companies performing economic activity throughout the European Union, in an electronic form where information must be collected and kept. It must be kept for 5 years in order to use it. Proper government of each member state should provide automatic exchange of information (Kosikowski 2008, p. 203) if:

- a. it claims that taxing occurs in a member state of the destination and efficiency of the control system strictly depends on information provided by member states of origin;
- b. member states claim that infringement of the legislation within VAT was committed or, there is probability to commit it in another member state;
- c. there is a risk to lose tax in another member state.

In order to perform Resolution 1798/2003, the Commission issued resolution 1925/2004 from October 29<sup>th</sup>, 2004 providing detailed principles of performing some resolution provision of the Council 1798/2003 on administrative cooperation within value added tax (Journal of Laws UE L 2004/331/13). Analogically, the solutions were adopted within the resolution of the Council 2073/2004 from November 16<sup>th</sup>, 2004 on administrative cooperation within excise taxes (Journal of Laws EU L 2004/359/1). The resolution regulates especially: coordination on request, exchange of information or previous request keeping and exchange information characteristic for internal EU's transactions, relationships with the Commission, relationships with third countries, principles regulating information exchange (Kosikowski 2008, p. 203).

The TEU determines the positions of public enterprises and those with special rights. These are the enterprises that provide services of common character (such as mailing services, providing electricity, water, gas), and simultaneously a state owns majority of their capital, majority of shares or majority in management pursuant to art. 86 of the Treaty Founding the European Union (Journal of Laws WE C 235 from December 24<sup>th</sup>, 2002).

Those branches of economy which are usually the subject of state monopoly were overwhelmed by competition principles as well, within the limits where their use does not result in disturbing in performing particular tasks trusted to them. It means that it is possible to exclude enterprises providing services in a common interest from competition rules if adjusting to competition rules disturbed realization of the objective. The Commission is a body that supervises respecting those rules (Adamczak-Retecka and Hołub-Sniadach 2005, p. 131).

There are less strict forms of cooperation towards the lack of full coordination. The most loose form would be a gradual approaching within the existing wide structures, namely elimination of all taxes at the source and widening loans ascribed the member states. Such approaching would be reasonable in the category of wealth, similarly to direct tax harmonization. There is, therefore, a problem of certain significance of approaching within bases and fixed rates. As long as narrow base, significant costs of amortization, etc., in practice, it accompanies to high fixed

rates, the harmonization only to the first or the other ones may increase the spread of real final rates. Potentially, the expensive disturbances are also the result of fixed rate discrepancies which cause many problems with agreeing transfer prices (in the widest meaning of the notion). Those problems may be considered analogical to the problems of trans-border trade which choose where to reach profits they act similarly to consumers who choose a place to do shopping. Therefore, the analysis of minimum tax rate is used here: all may benefit from establishing a lower fixed tax rate from legal entities. Thus, the recommendation of the Ruding Commission to establish a minimum rate in the amount of 30% is logical and theoretically reasonable. The arguments for maximum rate suggested by the Commission are not as clear. One of the causes of such an attitude may be the threat of the terms of trade effects (Devereux 2007, p. 280).

It is very difficult to define the notion of the agreed practices. The verdict analysis shows that such practices occur when enterprises attempt to omit the ban of anti-competitive agreements by the actions other than those in the form of an agreement. The entities participating in the agreed practice consciously undertake such an action that leads to eliminating competition. According to the Commission, if enterprises organize a system of mutual statistics information exchange in order to transfer market data, it leads to an agreed practice. Not all elements of an agreement are included in agreed practices but they may result from action coordination which is reflected by parties' behavior. The following situation is contrary to the competition principles, namely when one producer cooperates with competitors regardless the form of cooperation in order to agree common line of proceedings in the area of price movement and in order to provide prosperity through previous excluding any uncertainty concerning principle elements of that action such as the rate of price change, date and place (Case 48/49: *Imperial Chemical Industries v. the Commission*, See verdict 1972, p. 619). The directive allows the member states to reject refunding the cost shares to a daughter company by a mother company. Such costs include the costs of management and control paid by a mother company as well as the costs of share financing, e.g. interests from a bank loan taken for it. If, however, management costs are determined by a lump-sum, the amount may not extend 5% of profits paid by a daughter company, pursu-

ant to art. 5 par. 2 of the Directive of the Council 90/435/EEC from July 23<sup>rd</sup>, 1990 concerning common taxing system used for dominating companies and dependent companies from various Member States (Journal of Laws, WE L 1990/225/1). It means that the exclusion shall be limited in some countries up to 95% of the achieved profits.

The content of the Directive proves that the European Commission allows using the internal or treaty regulations in the national legislation preventing from the abuse. It means that the particular provisions included in the national law shall not be considered contrary to the document if they aim at preventing from avoiding taxation even if they limited or render using its benefits pursuant to art. 1 par. 2 of the Directive of the Council 90/435/EEU from July 23<sup>rd</sup>, 1990 concerning common taxing system used for dominating companies and dependent companies from various Member States (Journal of Laws, WE L 1990/225/1). The European Court of Justice estimates if there is any infringement of the principles of the Directive of the Council 90/435/EEU in a particular legal regulation, justified by the needs to prevent from avoiding taxation.

## **5. Limits in economic freedom**

The limits in an economic freedom particularly concern the process of connecting enterprises with regards to interaction forces of capital markets to functioning of entities especially those which aim intend to use the potential of instruments while performing their activity, e.g. issuing securities. The EU's fiscal policy in this matter is particularly important as well.

The process of connecting enterprises is a typical phenomenon for economy; however the EU's law relating to competition has implemented principles concerning connections. It forbids extensive concentration unreasonable with economic reasons which would threaten to competition disturbance. Connections of entities means taking a full control by one company over another one or several companies are connected, the control is taken over together over a given company or a new company is established. A subject

of such taking over may be a whole company or its part (*Vademecum – sources of information concerning the European Union* 2004, p. 101).

Nowadays, measures of double character have a significant importance for preventing from double taxation, i.e. international agreements on avoiding double taxation. Agreements on avoiding double taxation prevail towards the norms of international internal tax law. Due to their common character, the norms of internal law have lost their importance. Moreover, the directives concerning taxation of certain category of incomes of international character are the EU's specific norms preventing from double taxation (in an economic meaning).

Additionally, the norms of the EU's law of *legis generalis* character may directly interact to the way of profit taxation of an international character as well. It causes the fact that an economic entity undertaking economic activity must be aware that its profit is not an "internal" one any more but it becomes an international profit being the subject to various legal restrictions. The European entrepreneurs willing to undertake foreign activity must consider international legal regulations (first of all, the provisions of agreements on avoiding double taxation and regulations of international law concerning avoiding double taxation, in a very limited range) as well as the regulations of the EU's tax law. Together with a proceeding phenomenon of globalization, the selected legal restrictions have begun intensively interact at each other, which had had not much in common so far, shaping a complex tax situation for an entrepreneur. A proper defining relations between the both legal restrictions and the range of using norms of the EU's international tax law poses a great challenge for an entrepreneur conducting an economic activity. Due to the fact that the international tax law is an integral part of international public law and the EU's tax law belongs to the EU's law, it is necessary to start from determining general relations between the public international law and the EU's law, for full and proper specifying the range of relations between those two legal restrictions (Selera 2010, p. 51 and next). It should be considered that the differences between national tax systems of the EU's member states may influence the choice of an investment seat and lead to disturbances in the sphere of competition. The most important source of competition disturbances includes the problems connected with double taxation of dividends.

A little less important source of disturbances, as indicated in the report, concerns income taxes collected at the source due to paid interests, the differences in the legal entities income tax constructions, especially the tax basis agreed in particular states (Brzeziński 1998, p. 78). There are several arguments to prove the statistic models of balance, with the most important ones, namely those connected with tax loss and bankruptcy costs. Companies facing uncertainty towards future profits make balances of tax profit due to debt paper emission (assuming deduction of interest cost and the fact the company is a tax payer) with the tax cost arising due to the loss of opportunity to counting out income tax for legal entities, if a company stopped being a tax payer. Intuitionally, companies emitting debt papers until the interest income is equal to an expected tax rate for legal entities and natural persons due to own capital income (an expected rate of income tax for legal entities is equal to the opportunity to pay taxes for legal entities times income tax for natural persons). The traditional interpretation of the DeAngelo and Masulis model means the cost of debt paper emission results from the fact that not being a tax payer, a company loses its tax value due to the lack of deductions of prompt amortization and investment tax credits. It is, however, wrong interpretation. As long as there is a reason for a company income for tax purposes to become negative (e.g. when the expenditures due to a nominal interest rate are the subject of deduction), while emitting more debt papers, a company increases the possibility to stop being a tax payer and thus the only required income tax from own capital becomes the rate of the tax for natural persons due to the growth of the capital or dividends which is lower than tax rate of interest income. An optimal decision on the amount of debt makes balancing extensive tax cost due to own capital income (if one is a tax payer) to extensive personal tax costs of emitting securities when a company is not an income tax payer for legal entities (Devereux 2007, p. 229).

The costs of bankruptcy. Numerous models with included bankruptcy costs were able to indicate that companies choose an optimal debt policy while balancing tax benefit due to debt paper emission to the bankruptcy costs. Bankruptcy costs are the real ones such as lawyers and trustees' remuneration as well as the sales loss due to rearrangement or sale off a company's assets. Nevertheless, investors also face bankruptcy. There should

be a Miller-Modigliani's assumption called, namely individual bankruptcy costs are equal to a company's bankruptcy costs (Devereux 2007, p. 229).

The ban of agreements limiting competition refers to the agreements between enterprises acting on the same production or distribution level, i.e. horizontal agreements and enterprises acting on different production level that do not compete, i.e. vertical agreements, agreements of entrepreneurs' associations and other agreements between entrepreneurs aiming at elimination or limiting competition, pursuant to art. 81 of the Treaty Founding the European Union (Official Journal WE C from December 24<sup>th</sup>, 2002). For instance, the following agreements are forbidden: price, quota, those concerning market division or supply sources or the binding ones (*Vademecum – sources of information concerning the European Union* 2004, p. 101).

Pursuant to Directive of the Council 90/434 EEC from July 23<sup>rd</sup>, 1990 on common tax system for binding, divisions, providing a part of a company in the shape of assets, asset change and transferring a seat of a European company or cooperatives to another member state (Official Journal WE L 1990/225/1), the directive overwhelming only such actions that occur in relation to companies seated in different member states. The directive implements a common system of excluding capital profits from taxation, revealed due to economic operations aiming at company's rearrangement. Tax system neutrality means that the mentioned actions do not cause any tax burdens for either any shareholders or companies at the time of their occurrence (Brzeziński and Kalinowski 2006, p. 230). It concerns value surplus connected with the shares in those companies. Tax neutrality does not mean, however, the opportunity to tax that surplus at all but transferring taxing until property elements or shares in companies are sold which the value surplus was connected (Kosikowski 2008, p. 200).

More structural attitude to coordination may mean aiming at full using either the principle of domiciliation or the principle of source. However, the latter principle is favored. Nevertheless, there are two difficulties presented against it, namely abolishing deferring and evading paying taxes. Aiming at strengthening the principle of domiciliation by imposing high taxes at the source with simultaneous deductions providing enhancing a tax payer to submit reliable declaration may be a reaction to the above.

But there are problems of administrative character, especially the necessity to appoint a financial chamber dealing with re-allocation of incomes (Devereux 2007, p. 281).

## 6. The service directive

According to the authors, Directive 2006/123/WE was supposed to guarantee removing barriers within service flow and lead to liberalization of service market, since it provides an curious definition of the notion of a service provider. What is interesting, it is a typical legal definition, included in the content of a normative act aiming at determining the notion importance used in the act, which has been written directly in art. 4, beside the definition of other 11 notions of the directive (Etel 2012, p. 125).

Liberalization generally means allowing institutions and organizations to act on national and foreign markets. Liberalization, in that sense, means limiting or abolishing legal regulations as well as ceasing practices unfavorably interacting to freedom of providing services in order to provide the access to a national market for foreign entities and integration of the national market with a foreign market. Those actions are accompanied by eliminating barriers in capital flow in the turnover with foreign states by particular countries. Nevertheless, liberalization does not mean decreasing the number of normative regulations referring to markets, quite the contrary the number of standardizing regulations within providing financial services still grows. Liberalization also means decreasing legal limits in the functioning of national economic entities. It is performed by changing (increasing) service range which entities are entitled to provide (Jurkowska-Zeidler 2008, p. 68 and next). Pursuant to art. 4 par 2 of directive 2006/123/WE, the notion of service provider means “any natural person who is a member state citizen or any legal person mentioned in art. 54 of the TFUE, conducting an entity in a member state that provides or performs a service”. A service, however, is defined by directive 2006/123/WE as “any economic activity performed on own

account, usually provided with remuneration”. The legal definition formulated in Directive 2006/123/WE has a characteristic significance. It proves that the notion of a service provider should overwhelm any natural person being a member state citizen or any legal person (a company according to art. 54 TFUE), performing a service activity in a member state using the freedom of entrepreneurship or free flow of services. The notion of a service provider should not be limited only to providing trans-border services within free flow of services but it also should overwhelm situations when an economic entity begins conducting a company in a member state in order to develop own service activity. The above may lead to a conclusion that directive 2006/123/WE implements own notion “a service provider”, and simultaneously gives it a meaning equal to “an entrepreneur” the worked out in the ECJ verdict and doctrine.

A service provider means an entity (a natural person or a company) that conducts an enterprise. It is also characteristic that directive 2006/12/WE does not use the notion but uses the expression “economic entity”. Such an interpretation is confirmed by the explanation given to the term “service”. The subject of a service provider’s activity is offering and performing services. Simultaneously, a service does not mean the service pursuant to art. 57 TFUE (as the definition claims, it simultaneously remains in the agreements with that regulation) but any economic activity performed on own account, usually with the remuneration. The same notion of “services” is determined in directive 2006/123/WE by an economic activity in the construction indicated by ECJ which means that a service means performing entrepreneurship and providing services (Etel 2012, pp. 125-128).

According to art. 10 of the directive, the member states may demand obtaining a permission to conduct a certain activity from service providers coming from other member states as long as it is reasonable and necessary to protect primary requirements of the public interest while conditions of granting permissions to begin conducting an enterprise may not copy requirements or control which are equal or principally comparable in relation to the objective which a given service provider is the subject to in another member state. The above makes a certain opportunity to eliminate the most undesirable consequences connected with falling down regulation competition. If a certain member state adopts a very liberal conditions

to grant entitlement administrative acts (permissions) they still would not be respected equally by other member states using higher standards in that matter. In such a situation, the latter countries shall demand fulfilment of any conditions (prerequisites) required by them from all entities applying for submitting an act and shall not be satisfied by the fact that a given entity has already obtained a proper act in own maternity state. It may discourage in some way particular service providers intending to act in a trans-border way, to search those most liberal legal orders, mentioned in that matter, and it may slightly stop the trend of constant falling down (by other member states) (Szydło 2008, p. 67 and next).

Another problem is when a given member state uses more rigorous conditions to grant entitlement administrative acts than other states, the national economic entities may begin to push a maternity legislator to facilitate the mentioned rigors due to the fact that on a global, or at least all-European market, those entities may consider to be put in a worse competition situation and may also attempt to transfer own activity to other member states (Szydło 2008, p. 68).

The presented above verdict is confirmed by the preamble whose content claims the directive 2006/123/WE concerns entrepreneurship and services as well as entities conducting a company and entities providing services. Simultaneously, it is indicated that in cases when an economic entity transfers to another member state in order to perform a service activity there, there should be a difference between two situations: an activity overwhelmed an entrepreneurship freedom and activity overwhelmed by a free flow of services due to its temporary character. To distinguish freedom of entrepreneurship from a free flow of services, pursuant to the verdict of ECJ, a key element is the question if an economic entity conducts a company in a member state in which a given service is performed or not. If an economic entity conducts an enterprise in a member state where services are provided, then freedom of entrepreneurship is used. However, if an economic entity does not conduct an enterprise in a member state where the service is provided, then freedom of service flow is used. According to the ECJ verdict, a temporary character of a given activity should be estimated not only on the basis of the period of performing a service but also with consideration of regularity, period or continuity

of service performance. In each case, a temporary character of an activity should not mean that a service provider may not use certain infrastructure, e.g. offices or bureau in a member state where the service is performed in such a range that the infrastructure is necessary to provide a given service (Etel 2012, p. 128).

The above proves that regulation competition leading to liberalization of legal conditions to grant entitlement administrative acts may occur even when mutual recognition of entitlement administrative acts is not commonly adopted on an internal market, as it happens nowadays. In the context described here, it is worth noticing that in case of some areas of economic activities, there are legal acts on the EU's level which unify or at least harmonize legal conditions of obtaining administrative acts in the range of the whole Union, entitling to perform a given activity and which clearly impose the member states mutual recognition of the mentioned granted by them, entitling administrative acts. In such a case, mutual recognition of the administrative entitlement acts may not principally lead to a negative regulation competition since in the situation when there are unified or at least harmonious legal conditions to grant those acts on the EU's level no member state may undertake any actions in that matter which would be a symptom of the falling down mentioned above (Szydło 2008, p. 68).

To sum up, the service directive creates three conditions to increase economic growth and employment (its realization enables to create 600,000 new work places). The freedom of service flow, its reaching makes the directive objective, brings benefits to a middle class and consumers as well as employees. It has a particular significance for the countries with export surplus in the sector of services. However, some amendments are necessary, namely excluding certain areas (health service, social sector) from the range of the directive, adopting detailed executive regulations, providing effective control by cooperation of offices and distinguishing three directives: service, delegation and that concerning employment recognition (Budny 2008, p. 41).

CHAPTER 2

# **The genesis of the EU's mailing service market**



# 1. Introduction

The history of mailing is constantly connected with the history of civilization. The breaking point of the mailing history was establishing the royal mailing that started its activity in 1558. It was a royal enterprise managed by a mailing master, Prosper Prowan entrusted by the king, with remuneration and having shares in the incomes from private mailing delivery. Royal mailing was free of charge. Mailing occurred like relay between mailing stations. Thank to it, time of delivery was shortened. Mailing delivery on the route Cracow-Vienna-Venice lasted for 15 days. Initially, mailing courses were once a week. During next years, there was also mailing on other routes: from Cracow to Warsaw, Gdansk, Vilnius, Torun, Poznan and other cities. The mailing within the country developed especially during the regiment of Jan III Sobieski. Then, three mailing managements were created: the Polish, Lithuanian and Prussian arranging stations and constant mailing deliveries. At the end of the 17<sup>th</sup> century, there were permanent mailing routes connecting the most important Polish cities. Since 1583, there was unanimous fee of four groszys for letters regardless the length of the route. In the next years the fee increased (Jeziernski and Leszczyńska 2003, p. 59). Mailing services belong to so called public use services. Indicating the range of the notion of “public use service” is difficult due to the lack of its definition in the TEU and casuistic attitude of the ECJ which prefers casuistic attitude to that issue. In these conditions, the definition included in the Communicate of the Commission from 2001 titled “The public use services in Europe” seems to be useful (the Communicate of the Commission from 2001 titled “The public use services in Europe”, Journal of Laws WE from 2001 No C17, p. 4 and next). According to it, public use services overwhelm market and non-market services classified by public authorities as public use services and being the subject to particular duties of performing public services. The term “public use services” is simultaneously applied to determination of both tasks performer in the public interests of economic character and those that do not have such a character. However, only the entities providing economic services, so called services performed in a general economic interest are considered enterprises (Prosser 2005, p. 128).

In order to determine features of services performed in a general economic interest, the following documents of the Commission may be useful: the Green Book on public use services, Brussels, May 21<sup>st</sup>, 2003, COM (2003) 270 p. 79-83, the White Book on public use services (the Communicate of the Commission to the European Parliament, the Economic and Social Committee and the Committee of Regions, the White Book on public use services, Brussels, May 12<sup>th</sup>, 2004, COM (2004) 374 final, att. No 1) and the Communicate of the Commission from 2001 mentioned above. In their light, the discussed services, despite their economic character serve to realization of certain tasks socially useful (Biernat 2000, p. 440 and next). The verdict agrees that the following services have such a character (Materna 2009, p. 127 and next):

- Basic mailing services,
- Organization of providing mailing services on rural areas,
- Water supplies,
- Services concerning waste disposal,
- Services concerning work advisory,
- Distribution of energy,
- Organization of ill persons' transport,
- Providing certain flight routes (commercially non-profitable),
- Moor services serving to safety on the waters around a port,
- Managing social security system,
- Managing public telecommunication network.

The Tribunal highlights in its verdict that allowed restrictions of free capital flow must be precisely interpreted so as their range could not be one-sided indicated by a Member State without any control from the EU's institutions. The requirements of public interest may be appointed when there is a real and serious enough threat of basic social interest. The Tribunal checks if the measures adopted by a Member State allow providing minimum supplies of Energy and other goods (telecommunication or mailing services) in case of real and serious threat and if they do not extend what is necessary to reach that aim. The Tribunal indicates the necessity to treat objectively criteria of making decisions by public authorities (particularly by earlier publishing assumptions of a state policy in a given area) and implementing judicial control of those decisions. The Tribunal

considers proportional only subsequent measures of authorities' involvement in the decisions of companies' bodies (Mataczyński 2007, p. 123).

## **2. Characteristics of the structure and areas of mailing service market**

Mailing services market is included in so called sector orders. In Poland, orders provided to perform mailing services are included to sector orders according to art. 132 par. 1 p. 7 of the Act from January 29<sup>th</sup>, 2004, the law of public orders (Journal of Laws 2004 no 19 pos. 177 with later amendments). The development is included in art. 132 par. 3 according to which contracting and providing party of orders serving to providing mailing services, use sector regulations also for the orders connected with providing the following orders:

- Mailing services management,
- Delivering coded documents via electronic communication,
- Address databases management,
- Delivering electronic of registered mailing,
- Financial,
- Philatelic,
- Logistics, particularly delivering cargo and their confectionery and stocking.

In recent years, mailing services market has started to open towards actions favoring to competition development and creating one of important parts of the EU's internal market. The area of services that had been restricted only to a public operator has been systematically limited. The EU's works were focused mainly on creating legal regulations that would favor to competition. The Polish entrepreneurs, namely those who were created pursuant to the Polish law and as a rule, concentrate their economic activity on the Polish territory, are also the subject to the EU's regulations serving to protection of competition on a common market. It is a consequence

of belonging to the European Union by Poland whose legal regulations overwhelm also Polish entrepreneurs. Simultaneously, anti-competition practices of entrepreneurs or concentrations may be the subject to the regulations not only of the Polish anti-monopoly act but also proper EU's regulations. It requires settlements of mutual relation which the regulations of the Polish act and those of the EU's competition rights remain in.

The relation is indicated by proper regulation of primary or secondary EU's law (Kohutek and Sieradzka 2008, p. 60). The mailing directive from 2008 indicated in its content the date of opening a common market on December 31<sup>st</sup>, 2010. Poland applied to extend the deadline and finally the opening of the market occurred on December 31<sup>st</sup>, 2012 by implementing a key directive.

In 2012 the Polish register of mailing operators, besides Poczta Polska S.A., there are 267 entities, out of which 247 were registered in 2011. However, obtaining an entry in the register of mailing operators is not equal to conducting an economic activity by the entities (*The Report on the condition of the mailing market for the year 2012*, 2013, p. 3). Poczta Polska S.A. has been a main player on the Polish market for years. At present, only that operator provides full infrastructure to complex providing mailing services of a common character. In that group, the most significant position is un-registered letters. The confirmation of the above is data for the year 2012 in which the public operator performed over 2 billion mailing services in a national and foreign turnover (common mailing services, agreed mailing services including the messenger ones) which gave 4.7 billion zlotys income. The number of services included nearly 1.4 billion zlotys common mailing services which generated almost 4 billion zlotys income out of which over 1.2 billion zlotys were letters with the income of over 3.2 billion. Private operators provided in general almost 3.2 billion mailing services in 2012, in a national and foreign turnover (correspondence, advertisement, parcels, and non-addressed forms) which brought 1.6 billion zlotys income. The analysis of the data presented by the above mentioned operators indicates that in the national turnover, the biggest shares, as regards volumes, belongs to non-addressed forms (90.9%), however they did not play a significant role in incomes (8.9%). The main source of incomes of non-public operators are parcels generating about

60.5% incomes in the national turnover and about 72.5% in the foreign one. It should be indicated that in the mailing activity reports in the years 2008-2012 some operators did not indicate data concerning activity in the area of parcels. The legal status binding until the end of 2012, those operators presented an attitude that this type of services were performed on the basis of the regulations of the Transport law, not the Mailing law, in which a mailing parcel is defined as a service of a public operator. Therefore, the data concerning parcel services performed by non-public operators for the years 2008-2012 are incomplete and thus incomparable to previous years. Due to the way of defining a mailing parcel in the Mailing law, the President of ECO did not have any legal opportunities to execute those data (*The Report on the condition of the mailing market for the year 2012*, p. 3).

The EU's actions connected with the anti-competition policy and practices remain significant as well in the context of structure characteristics and mailing service market areas. Referring to the anti-competition practices (both those of forbidden agreements character and abusing a dominant position) a condition to use the EU's law is possibility to influence a certain anti-competition practice on the trade between the member states. Such a condition results from art. 81 TEU and art. 82 TEU making certain border within using a national and EU's law of competition protection.

If a given practice (potentially or indeed) infringes only trade within a given member state then it is not overwhelmed by the EU's competition law. It should be indicated that the prerequisite of possibility to influence a certain practice on trade between the member states should be widely explained. According to the European Court of Justice, that prerequisite is fulfilled if it is possible to predict on the basis of objective legal or factual factors that a given practice may directly or indirectly influence potentially or indeed the conditions of the trade between the member states which may disturb the realization of the integration objective of the Union. The definition of the discussed prerequisite presented by the ECJ (indicating the relation of the national competition law to the used EU's regulations) has a general character and it is rather difficult to deduce interpretation guidelines clearly and precisely. Therefore, in order to easier decision

made by an entrepreneur if an intended or used practice may influence the trade between the member states (being the subject to the EU's competition law), the European Commission submitted a proper guidelines.

Using the EU's competition law is not limited only to the cases of indeed influence of anti-competition practices on the trade between the member states. It is enough to claim the possibility itself (ability) of a given practice to cause such an effect. The above is confirmed both in a literal explanation of art. 81 par. 1 of the TEU and art. 82 of the TEU which state that anti-competition practices "may" ("are able") to influence the trade and in the mentioned attitude of the ECJ, namely "a sufficient degree of probability" (predicting that a given practice shall have a subject influence) (Kohutek and Sieradzka 2008, p. 60 and next).

### **3. Messengers' service market**

A service is an activity offered by one party to the other one, it is un-touchable and does not lead to any ownership; its production may be connected or not with a physical product. Services are untouchable therefore, contrary to products they cannot be noticed, tasted, heard or felt. Their feature is inseparability, they are simultaneously created and consumed. Services differ with their level and availability referring to an enterprise which provides them. Services are impossible to be stored. It is more difficult to provide a constant level of quality of the provided services than in case of product sales because most services is created, delivered and consumed at the same time (Pepliński 2009, p. 169).

Nowadays, some mailing services have been taken over by messenger's enterprises. They deal mainly with delivering parcels in a shorter time than Poczta Polska and providing untypical orders. Messenger's enterprises act both on local, national and international markets (Andrzejczak and others 2010, p. 150).

In Poland, messenger's companies have been acting for a relatively short time. Despite that, they bear a significant place in the national

economy. Quality means the dynamics of the Polish messenger's service market. Non-public operators realized 3.5 billion mailing services in general in 2010 which worked out over 1.3 billion zlotys income (Marysiak and others 2013, p. 32).

Demand for services provided by messenger's companies is supposed to grow mainly thanks to the predicted growth of industrial production and good macro-economic prognosis. In order to use the trend, companies fight for new technologies to satisfy quality of servicing clients (Nalepka 2007, p. 270).

The market of messenger's companies belongs to the most dynamic ones in the TSL branch. Messengers invest in modern technologies as well as improvement of client's service quality. Specialists claim that the future of messengers is consolidation and integration of services. Despite economic slowing, the branch of messenger's companies is in good condition. That happens thanks to still unused potential. There are some new trends observed on the shipping services market, including the messenger ones. Consolidation of the branch is the most important one, not only in the western countries. Companies join in order to strengthen its position on the market. All companies wishing to count on the market must improve their service quality. Those which have already had a stable position constantly improve the quality of provided services simultaneously indicating standards already existing on the market. The KEP branch overwhelms enterprises activity that characterizes not only different size but also variety of provided services and the range of action. There are both large and small companies offering wide selection of services, from simple transport services through confederation, packing reclaim service to complex supply chain services. The range of their services may overwhelm a region (voivodship), country, continent or even the whole world (Marysiak and others 2013, p. 32 and next).

There has been an increase of the range of messenger's services observed offered to institutional and individual clients. Mailing and messenger's services are first of all used by enterprises dealing with so called remote sales, i.e. the Internet shops, delivered sales houses and TV shops. The KEP branch structure in Poland is a reflection of the branch structure in the Western European countries. There are nearly all groups of offerors of the express delivery services. The biggest enterprises realizing messenger's

services include: DHL, UPS, OCS, DPD and other serving clients all over the world (Andrzejczak and others 2010, p. 150). Messenger's companies may be divided into several key groups in order to more detailed determination of the messenger's services market. The first group is so called integrators, international enterprises providing express services basing on foreign capital. They have extensive networks of subsidiaries. Those are UPS, DHL, TNT and FedEx. Companies acting mainly in Europe DPD and GLS belong to the second group. The third group includes companies offering express services of parcel transport that act on the national market thanks to own network of several dozen of outposts, Those are Siódemka, Opek and K-Ex. Group four (the biggest as regards number) includes companies of local range acting in and around large urban agglomerations using the services of all-Poland and international operators' services in the national and international service, e.g. Agap and Sprinter. The last group consists of companies providing market niche and specializing in logistic service of a specified group of clients, e.g. time matters. Present messenger's companies deal with road, railways, air and sea deliveries. The advantages of local messenger's companies is good knowledge of the market and treating each client individually, namely a bigger possibility to adjust. Large companies are rendered to realize some non-standard order due to system restrictions (e.g. using an automatic sorter). Smaller companies may also faster react to the changes on the market and implement new solutions. What is more important, such companies may also reliably satisfy clients' expectations as big players.

Medium enterprises have proper logistic and IT infrastructure to realize order correctly. Endeavors of those companies are focused on constant improvement of quality and on-time services nowadays. In recent years, only 15 enterprises have been playing a significant role among the registered messenger's and mailing companies which generate over 96% turnover of the Polish market. There are still over a dozen enterprises, mainly global players, on the market which generate over 96% turnover and mainly in national services. Foreign turnover generates about 25% income in total (Marysiak and others 2013, p. 33).

Moreover, the biggest messenger's companies shared the market between one another. TNT specializes in the services directed to the mo-

tor, medical and pharmacy sectors, DPD Masterlink concentrates on the following branches: telecommunication, clothing, cosmetics, banking, financial, electronic and publishing ones. DHL fights for increasing service sales directed to key clients. However, all highlight that they must adjust to clients' needs. Wishing to build a perspective from the beginning, one should start from determination of objectives, e.g. TNT decided to start coordination centers for its clients. While building clients' perspective it is also important to create an ideal image of TSL company from the point of view of a principal. The image may be created in different areas, e.g. (Nalepka 2007, p. 269 and next):

- Service and its general quality,
- On-time and its quality
- Client's service (comprehended as a client's contact with drivers and other staff),
- Promotion activity conducted by a company,
- Price and general level,
- Company's reliability.

Demand for messenger's company services grows thanks to predicted growth and good macro-economic prognosis. In order to use to trend, companies fight for new technologies to the need of quality of client's service. The further part shall present a way of messenger's company functioning focused on clients, thanks to which a client's perspective may be built in SKW.

## **4. The EU's policy towards competition on the mailing service market**

Growth of competition extension is one of the clearest and obvious trends of present economic development. Economic globalization, disappearance of geographical borders cause aggressive competitive actions reach for the markets monopolized so far or those of stable competitive

reality. Competitive challenges may not be unappreciated nowadays even in still monopolized economic sector like mailing. It would be also risky to underestimate new global competitive challenges in the area of education or retail trade. The power of competition grows together with fading barriers between sectors. Contemporary information technologies or modern financial structures absolutely lower barriers of entering any sectors. It is not a problem nowadays to allocate another electronic bank or virtual tourist company on the market. It is equally real to implement a mailing telecommunication operator on the Polish market. It all causes that today's phase of economic development may be treated as a phase of hyper-competition, "brutality" of competition which reaches anywhere with a greater and greater power. The ability to face competitive challenges is a success condition for every enterprise but also surviving especially in a longer time perspective (Lachiewicz and Majetun 2009, p. 31 and next).

A basic source of a competitive position is not a functional ability of an enterprise as a whole but the ability of different types of actions the companies undertake to provide their product to the market. Such a way allows considering abilities on two levels:

- a. Operational ability, comprehended as improvement of activity namely their performance better than competition,
- b. Strategic ability comprehended as a combination of those actions, namely creating a unique and key position connected with long-term actions and logistic solutions leading to reaching competitive prevail (Nalepka 2007, p. 271 and next).

Operational ability is a significant factor of performed logistic processes evaluation and single supply chain link while strategic ability plays a basic role in the whole supply chain evaluation.

In Poland, a public operator is obliged to provide common mailing services in a constant way. In art. 46 par. 2 of the Act from November 23<sup>rd</sup>, 2012 on the Mailing law (Journal of Laws No o pos. 1529 with later changes), the legislator obliged Poczta Polska S.A. to perform tasks of a public operator determined in the act. The verdict of the Voivodship Administrative Court in Gdansk from March 5<sup>th</sup>, 2009 I SA/Gd 369/08, LEX No 505757 provides an important guideline to the common interpretation of mailing services, where the court claimed that "pursuant

to art. 3 p. 12 of the mailing law, the notion of a public operator means an operator obliged to provide common mailing services”. The above proves that if a given entity is a public operator, it is necessary to determine whether it provides common mailing services as well as if it is obliged to provide such services pursuant to the legal regulations. Regardless the Court evaluation the mailing services provided by InPost, are not of public services character (which results from art. 1 p. 3 of the regulation of service providing by the company), the indicated company decided to conduct an activity on the principle of volunteer and in profit making purposes and the activity is continued by the company on the same principle. It means that the company may resign from conducting an economic activity at any time because the only entity which is obliged to perform mailing services in Poczta Polska S.A. Pursuant to art. 46 par. 2 of the mailing law the obligation of performing tasks of a public operator determined in the act was entrusted to Poczta Polska S.A. exclusively: (Kowalczyk 2011, p. 182).

According to the mailing law, the restricted services are those:

- a. Which accept, transfer and deliver in a national turnover:
  - Mails with correspondence,
  - Advertisement mails,
  - Other mails placed in the way rendering to check the contents with the weigh up to 50 grams,
- b. Which accept, transfer and deliver mails with the weigh up to 50 grams in a foreign turnover,
- c. Which accept and deliver mails with correspondence in a national and foreign turnover as long as they weigh up to 50 grams in the process of accepting or delivering.

The same conclusion results from art. 6 par. 2 l. b) of the Sector Directive which clearly indicates that the definition of “mailing services” also include unrestricted services. These may be both “common mailing services” and other mailing services provided to society according to art. 2 of the Mailing Law Act. Pursuant to the Mailing law, common mailing services are those which:

- a. Accept, transfer and deliver:
  - Letters up to 2000 g, including registered mails and those with declared value ones,

- Parcels up to 10 000 g, including those with declared value ones,
  - Mails for the blind,
  - Received parcels from abroad up to 20 000 g,
- b. Realize mailing transfers,
  - c. Collect at least one mail box and deliver mails at least once on a working day and not less than for 5 days a week, pursuant to art. 3 p. 25 of the Act from November 23<sup>rd</sup>, 2012 the Mailing law, the service performed in a national and foreign turnover on the territory of the Republic of Poland in a unanimous and in comparable conditions and with decent prices preserving the quality demanded by the law.

Due to the further opening of the EU's mailing services on competition and the fact that such services are performed by the network of ordering institutions, public enterprises and other entities, the orders granted by the ordering entities performing mailing services should be subject to the principles that guarantee using equal treatment, non-discrimination, mutual respect, proportionality as well as transparency, they create the basis for proper trade practice and enable greater flexibility (Kowalczyk and Szymańska 2011, p. 181). Directive 97/67 WE of the European Parliament and the Council from December 15<sup>th</sup>, 1997 on common principles of internal market of the EU's mailing services and service quality improvement remain key ones in that matter (Journal of Laws UE L 15 from January 15<sup>th</sup>, 1998, p. 14 with later amendments).

Economic activity within the mailing sector is the subject of the EU's legal regulation due to the role which mailing services plays as the one of the widest used instrument of connection and trade. Thus the European Union also realizes competitive policy on the mailing market. The direction of the binding legal solutions referring to the mailing sector, namely limiting monopoly of providing mailing services by national operators and increasing the share of other, especially private operators providing mailing services according to the principles of competition with simultaneous guarantee of their continuity and required quality (pro-competition mailing policy of the European Union).

The EU's legal regulations connected with competitiveness on the mailing service market also result from the specifics of setting up economic activ-

ity in that branch. The demand of obtaining either permissions or an entry to a register (the activity regulated in the comprehension of the regulations of the act from July 2<sup>nd</sup>, 2004 on the freedom of economic activity), pursuant to art. 6 pos. 6 of the Mailing law in the shape included in the Act from March 4<sup>th</sup>, 2010 on providing services on the territory of Poland (Journal of Laws 2010 No 47 pos. 278 with later amendments) concerns temporary mailing service providing within providing other services than common mailing services by the entrepreneurs from the EU's member states, the member states from the European Free Trade Association (EFTA), parties of the EOG agreement and states which concluded the agreement regulating freedom of service providing with the European Union and its member states. In this case, also the regulations of art. 6 par. 3 and 4 of the Mailing law are used, presuming exclusion of the obligation of entries to the register in case mailing activity dealing with accepting, transferring and delivering non-addressee forms and activity performed by an agent or a mailing agent on the basis of an agency agreement concluded with an operator pursuant to the Civil code (Strzyczkowski 2011, p. 527). Establishing an economic activity on the mailing service market all legal attributes regulated by the EU's and national law should be maintained. An economic activity has industrial and trade character, manufacturer activity and the activity in the sphere of free professions. An activity must be performed on own account and risk, not for the benefit of another person as it happens in case of performing work by an employee. Moreover, economic activity should have such features as stability, independence and trans-border character. Economic freedom should be connected with the possibility of establishing enterprises which means (Kubiński 2008, p. 99):

- a. In relation to enterprises – the right to undertake and perform economic activity by imposing and managing those enterprises and the subsidies and agendas subject to them;
- b. In relations to citizens – the right to undertake and perform economic activity on the basis of self-employment and creating and managing enterprises especially those which they effectively control, the activity does not overwhelm searching or undertaking employment on the work market as well as it does not concern the right to the access to the work market to the other party.

Enterprises wishing to enter that specific branch market also use instruments supporting sector evolution. Each enterprise searches for ways and methods thanks to which it shall become more competitive on a given market. An organization which wishes to be the best among its rivals should first of all manage its company on a high level. Effective management means realization of the assumed long and short-term objectives that influence the ability of an enterprise functioning. The Strategic Result Charter (SRC) as a concept of a management system is an effective communication instrument of informing on relations of planned objectives with the strategy of the whole enterprise. Generally speaking, the SRC is connected in a balanced long and short-term objectives, financial and non-financial measures, logistic activity effect indicators and ability within strategic and operational range (Nalepka 2007, p. 271 and next). Thanks to it, main relations between perspectives defined for the purpose of supply chains and their influence on the improvement of single links of the whole chain may be determined. There may be also a perspective of partnership cooperation implemented in an enterprise which enables supply chain skill evaluation. The perspective serves to reflection of inter-organizational corporation effects in the supply chain which an enterprise participates in, with consideration of factors which, on the one hand secure and on the other hand evaluate their successes.

Strategic ability measures on the level of supply chain are possible through using a system of indicators and measures defined in all the SCR perspectives (Radziejowska and others 2006, No 6, p. 25). Mailing operators performing mailing activity demanding permission as well as regulated mailing activity are overwhelmed by the requirement of the entry to the register of mailing operators. An entry to the register of mailing operators is realized for the motion submitted in a written or electronic form which includes the following data: an entrepreneur's company, its seat and address or domiciliation address and an address of the main seat of performing an activity, indication of its legal form and the number in entrepreneurs' register or other proper register or evidence of economic activity, tax identification number (NIP) as long as an entrepreneur has such a number, defining the range of the intended mailing activity, the area of performance of the mailing activity pursuant to art. 15 par. 1 and 3a

of the Act from November 23<sup>rd</sup>, 2012 on the Mailing law. An entrepreneur attaches a certification written or electronic form that all data included in the motion for the entry to the register are complete and true and the conditions of performing an economic activity in the range overwhelmed with the duty to acquire an entry to the register to the Mailing operators are known and fulfilled, defined in the act on the Mailing law, pursuant to art. 15 par. 2 of the Act from November 23<sup>rd</sup>, 2012 on the Mailing law.

The mailing operators' register consists of two parts: the register of permissions for performing mailing activity and the register of mailing activity which does not demand any permission, namely regulated mailing activity. The register is public and it is conducted in IT system, pursuant to art. 20 par. 2 of the Act from November 23<sup>rd</sup>, 2012 on the Mailing law (Breński, 2013, p. 143). The president of the ECO makes an entry to the register and amendments of data overwhelmed by the register within 7 days from the date of issuing the permission or the date of receiving the motion for the entry to the register, pursuant to art. 20 par. 5 and 6 of the Act from November 23<sup>rd</sup>, 2012 on the Mailing law. The Act – the Mailing law allows the possibility to suspend or terminate mailing activity both in relation to the mailing activity conducted on the basis of an acquired permission and an activity performed on the basis of an entry to the register of regulated activity pursuant to art 17 par. 2 of the Act from November 23<sup>rd</sup>, 2012 on the Mailing law. In both cases, an operator performing mailing activity is obliged to inform the president of the ECO the fact that the mailing activity is suspended or terminated within 14 days from the day of its suspension or termination. Information on suspension or termination of the mailing activity is placed in the register conducted by the president of the ECO (Strzyczkowski 2011, p. 531 and next).

## 5. The role of the national operator obliged to provide common services

The minister of economy is a body entitled to indicate enterprises obliged to perform all or some services overwhelmed by the range of a common service in most EU's countries. The minister begins proper procedures if it is claimed that availability, decent price and service quality included in the range of a common service is not or may not be assured within a normally functioning market (Galewska 2007, p. 159). The obligation to assure performing a common service by a state – abolishing the duty to indicate a common service operator. In relation to the principles of performing a common mailing service the Directive of the European Parliament and the Council 2008/6/WE from February 20<sup>th</sup>, 2008 amending the directive 97/67/WE in relation to the full realizing an internal market of the EU's mailing services (journal of Laws L 052 , 27/02/2008 P. 0003-0020), maintaining common service institutions, performed changes of principles of determining a common service operator. The principle of an obligation to indicate an operator by the state was replaced by the obligation of guaranteeing performance of common mailing service by the state. The member states are obliged to assure that performing a common service would be guaranteed at least five working days a week. In that way, providing a common service has a substantial dimension not a subjective one. In order to assure providing a common service throughout the country, the member states may use different solutions or their combinations:

- They may indicate one or several entrepreneurs as operators providing a common service (art. 4 par. 2 of directive 97/76/WE),
- They may indicate different enterprises to provide particular elements of a common service or to provide a common service in different parts of the country (art. 4 par. 2 of directive 97/67/WE),
- They may assure performing common services by their ordering in a course predicted in the law of public orders (art. 7 of directive 97/67/WE),
- They may assure providing a common service by the forces of the market (p. 23 of the preamble) (Strzyczkowski 2011, p. 520 and next).

There are two groups of enterprises participating in the procedure of imposing the obligation to provide a common service. The first group includes suppliers of public networks of electronic communication which most final users of public electronic communication service are linked to whose providing must be obliged within a common service. However, if an obligation of assuring a common service overwhelms availability certain devices, a public electronic network supplier is an enterprises included in the group where most final users of public electronic network service connected with using such a device is linked to. The other group of enterprises participating in the procedure of imposing an obligation to provide a common service consists of the remaining enterprises. The status of both groups of enterprises within the discussed procedure here is various. The enterprises from the first group are first of all obliged to participate in in the process of indicating an entity obliged to provide a common service. Moreover, “they use the priority in that matter” as the most competitive ones to take over an obligation to assure a common service after a lingered operator. It is not unanimous with exclusion of remaining telecommunication enterprises from a procedure of imposing an obligation to assure a common service, it would be in contradiction to the provision of the directive (Galewska 2007, p. 159 and next).

Restricted services are provided exclusively by a public operator, namely Poczta Polska S.A. in Poland. Undoubtedly, that kind of activity is overwhelmed a substantial range of art. 132 par. 1 p. 7 of the Act on the Law of public orders. However, the hypothesis of the commented regulation is not exhausted. It overwhelms all mailing services, not the restricted ones only. An identical conclusion results from art. 6 par. 2 l. b) of the sector directive which clearly indicates that the definition of “mailing services” also includes non-restricted services. There may be both “common mailing services” and other remaining mailing services provided for the benefit of a society in comprehension of art. 2 of the Act on the Mailing law (Kowalczyk and Szymańska 2011, pp. 185-187).

A free flow of capital may be limited as long as there is no a harmonious regulation predicting measures necessary to guarantee those interests. In case of the lack of such a community harmonization, the

European Union principally makes a decision on the level which they wish to provide the protection of certain legal interests and the way the level of protection they wish to achieve. However, the Member States are limited by the frames indicated in the treaty, particularly a requirement of respecting the principle of proportionality. In the light of the principle, the undertaken measures must be proper for guaranteeing to reach an intended objective by them and they may not go beyond what is necessary for achieving it. In the Court's evaluation, guaranteeing services lying in the general interest such as common mailing services may be a supreme consideration of a general interest which may justify limiting in a free flow of capital (Mataczyński 2007, p. 121 and next).

Obligations of providing a common service overwhelm duties imposed by a member state to an operator providing mailing services. Those obligations may concern a number of days when mailing is delivered, availability of points fulfilling duties of providing a common service, decent fees for providing a common service, unanimous prices for a common service, providing certain free services to the blind and short sighted. Minimum obligations of an operator within providing a common service are described in art. 3 par. 3 of Directive 97/67/WE of the European Parliament and the Council from December 15<sup>th</sup>, 1997 on common principles of an internal market development of mailing services of the European Union and service quality improvement (Journal of Laws L 15 from January 21<sup>st</sup>, 1998, p. 14) in relation to art. 3 p. 3 of the Directive of the European Parliament and the Council 2008/6/WE from February 20<sup>th</sup>, 2008 changing the directive 97/67/WE in relation to full realization of an internal market of the EU's mailing services (Journal of Laws L 052, 27/02/2008 P. 0003-0020).

A common service consists of a guarantee of providing a common service at least for days a week (unless it is impossible due to exceptional circumstances and geographical conditions) which overwhelms one acceptance of mailing and one delivery (to a house or a company's seat, to a natural or legal person or to a proper installation on conditions set up by the national regulation body) (Strzyczkowski 2011, p. 522).

A guarantee system of common services must be characterized by the following features (Garbarski and Tkaczyk 2009, p. 249):

- Unconditionality – possibility to use a guarantee by a client should not be dependent on fulfilling any condition, the basis of the guarantee realization should only be not fulfilling promises or even a client's dissatisfaction itself,
- Significance – the guarantee should concern those features of services which are important for a client and a reclaim and refund should cover all costs connected with a client's dissatisfaction and inconvenience,
- Communicativeness – the guarantees should be formulated in such a way they are unanimous and easy to understand by consumers in order they knew precisely what they may expect. The way of formulating a guarantee should be also comprehensible for employees in order they knew which actions they need to undertake in case of a client's dissatisfaction,
- Easy realization – a company should eliminate those principles of a guarantee realization which may cause decrease a client's satisfaction with its performance, e.g. the necessity to deliver a proof of incorrectness or a written complaint may cause postponing the process of a service repairation in time and decrease a client's satisfaction with a guarantee realization, simultaneously decreasing the importance of the instrument in decreasing of the observed risk.

Granting a guarantee to clients is directly connected with a system of service repairation. The guarantee means not only refunding costs paid for the purchase of dissatisfying service but also its proper performance for the second time. Properly implemented and realized system of guarantees and active service repairation should assure clients that the service company does its best to provide a service properly and the same each time, and if something goes wrong and a mistake occurs, it will feel responsible to repair it and refund clients their loss (both material and mental ones). Acquiring such sure may cause that perceived risk of purchasing the service by clients shall be lower than in case the lack of guarantee (Garbarski and Tkaczyk 2009, p. 249).



CHAPTER 3

# **The employment policy in the mailing services**

# 1. Introduction

A principal objective of a state policy in relations to a labor market is aiming at an efficient employment, i.e. employment allowing using labor forces resources in an optimal and effective way available in a given economy. Nowadays, full efficient employment is claimed when an unemployment rate is on the level of 4-5% (Włudyka and Smaga 2012, p. 280). A state more and more often aims at implementing so called partnership labor market policy towards such needs. It also concerns the mailing services sector.

A partnership way of conducting pro-employment labor market policy is supposed to serve not only democratization of undertaking decisions but first of all an accepted and common realization of the policy thanks to participation of all possible and interested actors in its creation (working out strategies and programs), promoting and usage (Baran 2004, p. 289).

The law should guarantee not only wide protection of the employed property interests but first of all care for their dignity, freedom, life and health as well as other personal goods (Szjenjuk, 2011, p. 68). The norms of the labor law should first of all serve to the realization of personal goods protection of those employed as their most precious goods (Szewczyk 2007, p. 17).

The European labor law is not unanimous but it overwhelms two groups of sources. Those are first of all acts being agreements in the comprehension of the international law. They include the treaties of three Communities and agreements concluded by the European Union together with agreements concerning associations and those on joining the EU. They are considered to be a part of the international labor law. The remaining part of the European law is created by the EU's bodies, not in the way of concluding international agreements. They are an institutional creature not a consensual one. The member states have transferred a part of their legislative competence to the EU's bodies. Simultaneously, the Communities' legal body elites are similar to the national legislation and they are binding among all the member states without any ratification. Therefore, they are sometimes called an over-national law. Moreover, the Community law is usually used towards private persons not only towards states which particularly concern the labor law (Florek 2005, p. 29 and next).

While observing the legislation of other member states, especially Germany and Great Britain, and comparing them to the Polish legislation, it is easy to notice the ordered system of our European neighbors and precision of regulation for full clearance and proper interpretation of the law in each case and situation. The Polish law seems to be very messed in the light of foreign labor market regulations. The analogy concerns an empiric side of the labor market, performing work in practice. Undoubtedly, the labor code and the whole Polish labor law are based on obligatory concept of the work performance. It is expressed in art. 22 par. 1 of the Labor code describing its two subjects and a principal content as an obligation to perform work under the supervision of an employer with remuneration (the state determines a minimum amount of remuneration, in 2013 the minimum gross remuneration was 1600 zlotys pursuant to the Resolution of the Council of Ministers from September 14<sup>th</sup>, 2012 concerning the amount of minimum remuneration for work in 2013 (Journal of Laws 2012 No 0 pos. 1026)).

The Community law has an autonomic character which means that is independent from legal systems of particular states. National legislative or judicial bodies are not entitled to change or repeal the law. The autonomy is based on the division of properties between communities and member states. As long as the international law implementation depends on particular states the European law is respected unanimously. It is binding in all Community states in all their parts and it may not be limited (used narrowly). Otherwise, the principle of the same treating all the states could be infringed (Florek 2005, p. 29 and next).

Two representative states, namely Germany and Great Britain were taken into consideration for the dissertation on the Polish labor law in the light of the European Union. The analysis of the European labor markets on the example of Germany, Great Britain and Poland indicates that the solutions used by the Anglo-Saxon social model, mainly the British labor market, are considered the most effective from the point of view of the situation on the social market. The adopted policy of regulating the labor market in this country leads to the low unemployment rate with the high professional activity and the low risk of losing a job. It is worth mentioning that the country deals with professional activation of women

and the elderly people the best. The assumptions of the Lisbon Treaty concerning the level of participation of women and those at the age of 55-64 in the labor market are fulfilled the best in such states as Great Britain (Miłka and Wilk-Jakubowski 2006, p. 142).

In Germany and Poland the situation does not look favorably. In Poland, the level of participation in the labor market is relatively low and accompanied by low level of security in case of losing a job (Miłka and Wilk-Jakubowski 2006, p. 143).

## **2. Work determinants while performing mailing services**

Mailing services belong to the fastest developing branches of services in the EU's economies. A significant competition on the market of those services demands increasing the quality of the performed services in particular companies by highlighting on-time delivery, security and reliability, competitiveness of prices, availability to services and professional widely comprehended customer service. Labor market also looks forward to professional employees. Their involvement may contribute to increasing turnover of each mailing-messenger company. Graduates are offered employment by all-Poland range operators such as Poczta Polska, InPost, DHL EXPRESS (Poland), DPD Polska, OPEK, K-EX, and the local ones. Enterprising persons set up own one-person service companies as well.

The labor market in the mailing services sector does not differ much from the classical labor market and rules the same rights as other economic sectors. The strategy is often worked out for entrepreneurs determined as strategic economic units. Some entities focus their activity on narrowly defined branch and their strategies are similar to the strategies of a corporation in a given branch. According to the theory of synergy, a corporation that consists of several enterprises creates more value than the sum of the parts creating it. Also the theory of strategic management

on the level of corporation is nowadays a popular subject of scientific research (Collis and Montgomery 1995, pp. 118-128). The theory attempts to identify how a corporation management and corporation strategy create synergy effects (contrary to a company strategy). In a company characterized by much diversification, the role of corporation in creating an added value means using the level of central information reached from particular operational units by managers in order to allocate the capital and human resources between those units (Niedzielski and Łapińska 1999, p. 60).

The strategy of human resources management in the public administration, as it occurs in case of a national operator, may not Focus only on particular functions of human resources management. A significant part of actions which may be ascribed to the management overwhelms many functions integrating them inside. Those actions may be determined as a human resources management policy which is led within all the functions. The policy means constant guidelines concerning the methods which an organization intends to use. It defines values recognized by an organization concerning the ways people should be treated and basing on them, it creates principles according to which managers act in relation to matters connected with human resources. The policy plays a function of particularization of “the human resources philosophy”, namely assumptions concerning the way of treating people in an organization. The policy sometimes does not have a formal, written character. In such a case it exists as a conjectural management philosophy and attitude towards employees. A staff policy in the unfixed shape may insufficiently serve to solve conflicts within an organization and disputes between an organization and employees however it may be a basis to formulate a mission, vision and values of an organization (Rostkowski 2012, pp. 118 and next).

A mailing sector employee should be skilled and prepared to perform such professional tasks as:

- Collecting, transport, delivery and handing mailing and messenger dispatch;
- Performing promotion actions and supporting active sale of goods and services included in an operator’s service basket;
- Performing distribution and expedition works as well as keep records;
- Running financial turnover and banking services.

In order to perform the professional tasks mentioned above, it is necessary to acquire a minimum education on the level of mailing and financial services techniques and skills and knowledge determined in the Core Curriculum concerning the vocational education, i.e. (The Core Curriculum for the profession of Mailing and Financial Services Technician of a module structure 2010, p. 8):

- The educational effects are common for all professions (Health and safety, PDG, JOZ, KPS, OMZ);
- Educational effects are common for the professions within the administration and service area and constitute a basis to educate for the profession of a group of professions;
- The educational effects are proper for a qualification selected in the profession: Performing mailing, financial and messengers' services and those concerning goods turnover as well as distribution and expedition tasks in the mailing and messengers services.

Education, according to the worked out Curriculum allows reaching the education objectives mentioned above. Realization of the work determinants while performing mailing services is confronted by the employees' evaluation system which may be presented on the example of Poczta Polska S.A. that consists of 8 thousand outposts throughout Poland. There are analogical employees evaluation principles used towards each of them and analogical principles of human resources management.

The employees' evaluation system results here form Poczta Polska organization as a workplace. An annual work plan of Poczta Polska considers the most important tasks presumed to be performed by organizational units including the works connected with human resources management. The works connected with its preparation are coordinated by the Commission Office supervised by the Chairperson of the Commission.

Department directors present annual work plans of the subject departments to a Deputy Chairperson or a Commission Chairperson to a supervising department if it supervises directly within an indicated deadline by a Commission Chairperson. The Commission Cabinet monitors performance of tasks included in the annual plan based on 6-month or annual reports transferred by organizational units within 30 or 45 days respectively having finished a given report period. The Commission Cabinet pre-

sents collective reports to the Commission Chairperson and Chairperson Deputies worked out on the basis of transferred information after the each report period. The specifics of the work of Poczta Polska determine expectations put to employees. There is a period employees' evaluation system used in the office. Those evaluations are conducted in a way that does not infringe basic labor law principles. The aim of such evaluation is enabling an optimal allocation of employees' potential by:

- Determining an employee's usefulness on an occupied post;
- Planning a vocational development and trainings of an employee;
- Planning an individual career path of an office worker;
- Providing information on an employee's evaluation and effectiveness from the point of view of the needs and requirements of an organization;
- Creating a staff reserve.

A unit responsible for preparation, organization and assistance in employees' evaluation is the Section of Staff and Trainings of the Legal and Administrative Department of the office. Decisions on performing an additional, individual evaluation of an employee are undertaken by a supervisor of a higher level (director of the department) in the agreement with the Section of Staff and Trainings.

Those evaluating an employee are selected by the Section of Staff and Trainings depending on an occupied post and specifics of duties. It is adopted that for employees included in the department structure these are chiefs of particular departments and for chiefs and other persons, these are department directors. Department directors' evaluations are performed jointly by members of an office management. All employees of Poczta Polska are the subject of a period evaluation.

The evaluation is performed on the basis of a degree form. It is formulated in a holistic way with regards of all criteria included in the degree form. An evaluator is obliged to complex completion of the degree form. It is forbidden to formulate the evaluation selectively or incompletely. The condition to perform an employee evaluation is the employee's prior self-evaluation. The self-evaluation is performed on the basis of a questionnaire thus he/she is actively involved in the evaluation process. A constant element of an evaluation process is an evaluating conversation

between a supervisor evaluator and evaluated employee before the results of the evaluation. Having submitted the evaluation results, a supervisor presents it to an employee which is confirmed by a signature in a declaration included in a degree form.

An employee evaluation is performed every six months. Period employee's evaluations are performed in the first and third quarter of a year. A direct supervisor plans the time of performing a new employee's evaluation together with the Section of Staff and Trainings which is provided to an employee two weeks in advance. Therefore, an employee is informed on the date of an evaluation each time two weeks in advance. In case of a negative evaluation of a given employee, another evaluation may be performed after three months but not later than after six months. Another evaluation after the negative one is performed in a regular date of performing evaluation.

A new employee is the subject of evaluation not earlier than after two months of work however before three months, and in particularly reasonable circumstances, six months. Another evaluation is performed after another four months of work after submitting the first evaluation results. Another evaluation is performed within at least another four months of work not later however than six months after the second evaluation pursuant to art. 5 par. 1 of the Work Regulation of Poczta Polska.

Besides the determined dates of performing an evaluation, an individual employee's evaluation may be also conducted for the motion submitted to a direct supervisor and the Section of Staff and Trainings if there are particular reasonable circumstances. An employee who disagrees with evaluation content may appeal via the Section of Staff and Trainings and in the agreement with a supervisor evaluator to a supervisor of a higher level (a department director or a manager of the office). An appellation may be submitted within 7 days after being informed on the evaluation.

In Poczta Polska S.A. a Collective Labor System is a significant source of work principles. A basic condition obliging an employer to implement a collective labor system in a company is acting labor unions within that entity. The system is a document which may be concluded both on or beyond a company level. Concluding a collective labor system occurs in the course between the parties of the system: an employer and labor unions acting in a given enterprise representing the employees. A collec-

tive labor system particularly regulates the conditions of work including remuneration for work and other funds for an employee or his/her family. The system may be compared to the labor code adjusted to a given enterprise which individually regulates issues connected with typology of work of a given enterprise including absolutely binding regulations formulated maintaining a basic principle of non-infringement of the third party's rights (Baran 2007, p. 317).

### **3. Flexible forms of employment in the European Union in the context of mailing services**

An employment relationship is the most common form of work. It is a legal relationship whose content is an employee's obligation to perform a certain work for remuneration. The labor code constitutes in the matter as follows: "While concluding an employment relationship an employee is obliged to perform a work of a certain type for an employer and under his/her supervision and in a place and time indicated by an employer and an employer is obliged to employ an employee for remuneration" pursuant to art. 22 par. 1 of the Act from June 26<sup>th</sup>, 1974 of the Labor code (Journal of Laws 1974 No 24 pos. 141 with later amendments).

An employment relationship arouses as a result of concluding a labor contract, appointment, choice or nomination. An employee, on the basis of an employment relationship, is obliged to perform work under an employer's supervision and in the place and time indicated by an employer. Moreover, an employee is obliged to perform work personally and an employer bears the economic risk of the work process. As a consequence of concluding an employment relationship, an employer is obliged to provide such benefits for an employee as holiday or guaranteeing safe and healthy working conditions. Moreover, an employer must respect the regulations providing an employee the protection of employment relationship continuity (Boratyński and others 2003, p. 11).

In Poland there are the following types of labor contracts (Kubot 2003, p. 2; the Act from March 13<sup>th</sup>, 2003 on particular principles of employment relationship termination due to reasons not concerning employees, Journal of Laws 2003 No 90 pos. 844 with later amendments):

- A contract for an indefinite period, where the parties do not determine the date of its termination;
- A contract for a definite period, including a labor contract for a substitute where the parties determine the date of its termination in advance. The contract may not be terminated before the determined date with the exceptions indicated in the Act. A substitute labor contract is concluded for the period of an employee's absence, there are no provisions of a particular employment relationship continuity connected with pregnancy or those concerning the remaining contracts of definite periods;
- A contract to perform a certain work; it is concluded in order to complete a certain work by an employee and it is terminated after the work is finished. It is forbidden to include any provisions concerning the opportunity to its dismissing;
- A probation contract; it checks an employee's ability before employment for a definite or indefinite period. Extending a period of uncertainty, which is a probation period, would be unfavorable for an employee thus the labor code determines, in art. 27, its maximum length for 3 months. The parties may agree a shorter probation period than that indicated in art. 27 of the Labor code.

In the light of the verdict of the Court of Justice of the European Union, the contracts for indefinite period should be a rule but an employing entity may not constantly employ the same person with the following contract for a definite period. According to the Court, an employee has the right to a constant regular post which provides mental comfort and the sense of stabilization. Directive 1999/70/EWG obliges to treat period contracts as those non-typical ones and effectively limit their number as well as occurring important reasons justifying their conclusion. Extensive using period contracts do not agree with the directive or the frame agreement concerning work for definite period from March 18<sup>th</sup>, 1999.

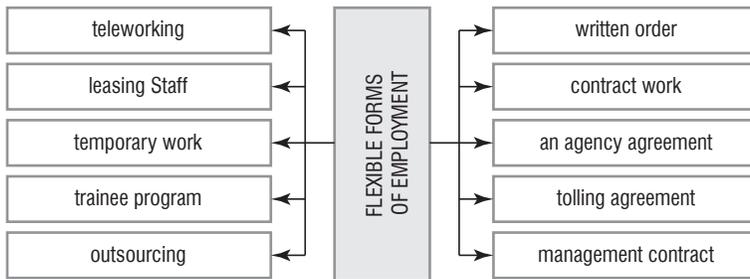
In each dispute labor courts should examine if there is a justified cause of employment with a period contract.

While concluding an employment relationship, the parties should determine mutual rights and obligations. The most important obligations of each employer are as follow (Hill 2010, p. 135):

1. Allowing an employee to perform an agreed work (art. 22 par. 1 of the Labor code),
2. Particular determining an employee's tasks within an agreed type of work and instructing him/her on the way of its performance (art. 94 p. 1 of the Labor code),
3. Acquaintance an employee with basic entitlements,
4. Arranging work in the way providing full using of the work time and reaching proper efficiency and work quality by employees (art. 94 p. 2 of the Labor code),
5. Preventing from discrimination in employment,
6. Providing safe and healthy working conditions (art. 15 and 94 p. 4 of the Labor code and Chapter 10 of the Labor code),
7. Providing remuneration for work performed properly and on time (art. 13 and 94 p. 5 of the Labor code and Chapter 3 of the Labor code),
8. Providing holiday and leaves presumed in the regulations (art. 14 of the Labor code and Chapter 7 of the Labor code),
9. Preventing from mobbing,
10. Facilitating professional skills improvement to employees (art. 17 and 94 p. 6 of the Labor code).

Beside the obligations mentioned above and other duties resulting from legal regulations, employer's obligations may result from the provisions of a labor contract. On the mailing services market, there are various forms of employment used more and more often which are different from an employment relationship, described as the flexible ones (alternative, non-typical ones). They are created and implemented by employers first of all in order to attract and keep skilled workers with minimum labor costs (Lachiewicz and Matejun 2007, p. 344). The selected forms of employment are presented in Picture 1.

**Picture 1.** Selected forms of employment



**Source:** own work based on *Problemy współczesnej praktyki zarządzania/The problems of the present management practice*, ed. Lachiewicz S., Matejun M., Wydawnictwo Politechniki Łódzkiej, Łódź 2007, p. 344

The notion of a flexible untypical employment is often comprehended as civil-legal forms of employment described as so called non-employees' civil-legal employment. Civil-legal employment flexibility means performing work in the conditions of a performer's independence (the lack of subordination and employer's supervision) and not providing entitlements resulting from an employment relationship therefore there is lowering costs of such employment in comparison to the labor costs within an employment relationship.

The labor law science indicates far similarities between civil-legal and employee's employment resulting in the difficulties in proper qualification of a given legal relationship as an employee's or non-employee's one. Those similarities include first of all much stability of legal relationship within which performers do work and it is usually their only employment. A performer is often obliged to a personal performance of the work for a principal who takes over his/her work results similarly to an employer within an employment relationship. There is also a rule that performing work within a civil-legal agreement for remuneration it is often the only and main source of a performer's and his/her family maintenance. The indicated similarities justify, it seems, granting performers certain necessary range of protection which is used by employees and which is a coun-

terweight to flexibility of such employment. Regular employment of that type is significant for economic and social reasons, especially as regards self-employment (Dral 2009, p. 394).

In a civil-legal employment an employer concludes a legal relationship with an employee within which work is performed on the basis of agreements regulated by the civil code provisions, namely on the basis of contract of mandate, contract work or unnamed contract which the provisions of mandate are used to. An important feature of civil-legal employment is lack of performing work under an employer's supervision, characteristic for employment relationship. Civil-legal contracts need not to be performed personally as well. In the verdict from November 25<sup>th</sup>, 2005 the Supreme Court claimed the feature of a labor contract is not remaining to be at employer's disposal because it may also occur in civil-legal contracts but it is performing work under an employer's supervision. The feature has a constitutive character for the existence of employment relationship (Dral 2009, p. 393).

Contracts of mandate and contract works are the forms of flexible employment used most commonly in the branch of mailing services.

A contract of mandate is a consensual agreement binding two parties. It may be payable or non-payable. The way of its concluding is similar to other agreements. However if someone provides professional action to others should notice a principal about it as soon as possible if he/she does not want to accept an order. The contract does not require any particular form, however the matter of legitimacy should be considered in the light of provisions of proxy. A mandatory acting on the basis of the contract has a basic obligation to perform a certain legal action for a principal. It may happen that performing a contract means performance of one particular legal action (e.g. concluding one contract) but it may also mean to perform numerous duties of management (which is normally connected with many actions). Performing a contract of mandate does not mean achieving a particular result (it is happens in a contract work) but attempts to achieve it (Baran 2012, p. 165).

A contract work has been regulated in art. 627 and next of the Act from April 23<sup>rd</sup>, 1964 the civil code (Journal of Laws 1964 No 16 pos. 93 with later amendments). A contract work means that contractor is obliged to perform a particular work and an ordering party is obliged to pay

remuneration. The parties of the contract are: the one whose effort attempt and force the work is supposed to be completed (an order receiver) and the one who the work is supposed be performed for (a purchaser). There is no relation of subordination between the parties which is characteristic in the labor contract or any other relationship of dependence. The features of contract work are as follow (Stojek-Siwińska 2008, p. 117):

- Definite and certain work result in advance;
- Remuneration for work performed according to the contract.

A contract work as typical agreement of a result may be used in such cases where it is important to perform actions leading to arousing a particular result of a material or non-material character. The subject of such a contract work may be: performing particular things, a flat renovation, expertise or translation, etc. Repayment for work means an order receiver is paid remuneration for the performed work. The parties are free to determine remuneration in the contract work. The remuneration for contract work does not need to be of a financial type (Stojek-Siwińska 2008, p. 117). The differences between a contract of mandate and work contract are presented in Table 1.

**Table 1.** The differences between the contract of mandate and the task-specific contract

Feature	Work contract	Contract of mandate
The way of performing a contract	An order receiver is obliged to achieve a particular determined result; the way of performing the work depends on the will of a performer.	A mandatory is obliged to proper performance of repeatable actions not to achieve a determined result.
Personal performance of the work	An order receiver is not obliged to personal performing the work unless it is agreed in the contract.	Personal performance of the work is a rule here. A mandatory may entrust performing the order to another person. Such a provision is acceptable if it results from the contract or a custom or if a mandatory is obliged to do it by particular circumstances (a principal must be informed about the above).
Remuneration for work	The contract is payable. A purchaser is obliged to pay remuneration at the moment of submitting the work at the amount equal to its value.	The contract may be non-payable. However the lack of remuneration must result from the contract or circumstances.

**Sources:** own work based on the Labor law 2008, ed. Stojek-Siwińska M., Wolters Kluwer Polska, Warszawa 2008, p. 118

To sum up, employment flexibility is expressed in existence of new forms of work and its new organization in the branch of mailing services: leasing (employees' subcontracting), outsourcing, working in teams or other forms. In the western countries, there has been a growth of the number of labor contracts with definite period recently. A clear growth of concluding such contracts has been noticed in France, Germany and Great Britain. In the recent period, the percentage of such definite period employees makes on average 12% in the EU's countries (in Poland the percentage has increased from 8 to 17% and is still growing) (Frieske 2003, p. 75). It is estimated that in those countries people remaining in all forms of flexible employment make about 30% of the total number of those working (Szytko-Skoczny 2004, p. 252).

#### **4. Economic aspects of using flexible forms of employment as an alternative source of using it in realization of mailing services**

All those employed for the realization of mailing services remain either in the worker or non-worker employment (staff and other persons performing work). All they all maintain themselves from own work remaining respectively in the conditions of personal subordination or economic dependence on an entity with financial funds. Many people realizing mailing services remain "in dependent employment" unlikely to remaining "in independent self-employment". It is expressed in so called long-term personal employment continuity in performing work without own capital involvement.

There are more and more untypical forms of employment on the mailing service market. An example of the changes which must occur within the forms of employment is Poczta Polska S.A. In May 2013 the Management of the company undertook a decision on dismissing at least 15 thousand employees, namely half of general employees by all the remaining

mailing operators in total. Before the changes, Poczta Polska had employed 90 thousand workers in 8240 outposts throughout the whole country. In practice, the threat of dismissing touched every sixth worker of the company. That calculation shows what a significant role in an effective staff management may flexible forms of employment play (<http://praca.wp.pl/title,Zatrudnienie-straci-co-szosty-pracownik,wid,15648127,wiadomosc.html?ticaid=111742>; 09.10.2013).

Nowadays, Poczta Polska uses the substitute and civil contracts most often as flexible forms of employment. It is relatively “young” form of employment which has been implemented by the amended act of the Labor code from July 26<sup>th</sup>, 2002.

A substitute contract is a form of a definite work agreement which allows flexible employment to another person in place of an absent worker. According to the above regulation, a substitute contract is an agreement concluded if there is a necessity to substitute a worker during his/her justified absence from work. An employer may employ another worker on the basis of a labor contract for a definite period overwhelming the time of the absence. An everyday practice shows that during a work relationship, each worker experiences various situations which are the reasons for shorter or longer justified absence from work. A longer absence, which is often very severe for an employer is caused first of all by:

- an employee’s disease;
- maternity leave;
- parental leave;
- unpayable leave.

A substitute contract is a particular form of agreement for a definite period. Its characteristic feature is the way of defining the final date since it is concluded up to the return of the absent worker.

Untypical forms of employment are a wide notion overwhelming variety of ways to perform work on different basis from a traditional model (Szewczyk 2007, p. 197). Mailing services companies that wish to maintain themselves on the market use untypical forms of employment in order to reach skilled and experienced staff. They are beneficial for companies, namely employers, since they mean lowering costs transferred into employees and higher mobility of those employed.

Managements of numerous companies providing mailing services, before making radical decisions, were afraid of increasing concern among employees since such a form of employment may be connected with less stability, remuneration which may result in receiving lower pension. However, in a situation when many young well educated persons despite possessed skills are not able to find any job, the offered form of work has been adopted with comprehension and employees accepted the offered changes. Such a form of employment, especially for women, is favorable because it connects professional career and housework without neglecting any aspect.

Flexible forms of employment may be considered from two perspectives. They refer to the performed activity from the perspective of legal work relationships but performed in an untypical way: they also overwhelm “non-workers’ employment” excluded from labor law regulations but to civil-legal contracts. The most popular and common flexible forms of employment in the branch of mailing services may include as follows: part-time work and work for definite period (Szczerbiński and Wasilewski 2011, p. 149).

Work for definite period unlikely to full time job is relatively less popular among the branch employees. Having decided to undertake such a form of employment, a person receives less remuneration comparing to another one employed for indefinite period but he/she is more likely to lose a job or to be excluded from the market. While evaluating the situation from a company’s Management perspective, it should be noticed that precisely determine time of performed work increases the threat of employees’ rights infringement. Employees explain the above in such a way that the lack of job offers adequate to their skills pushes them to undertake such a type of activity. Besides, such a form of employment is also perceived as a positive mechanism facilitating to agree all sides of professional and social life.

Flexible forms of employment are not so popular on the Polish labor market as in the Western European countries. In 2012 there were 347.5 thousand Polish women using the above employment system out of which over a half was employed in the professions considered as the feminized ones (Kalinowska and others 2012, p. 10). Indeed, the number of women

working part time prevails over men but it is relatively low and the relations of participation of both sexes are balanced. Whereas, in Poland there may be a different situation observed than in the remaining European countries where is prevail of men over women working for definite period. Women, while undertaking the above alternative, declare that the only reason why they decided on such a type is lack of other perspectives.

Flexible forms of employment, unwillingly undertaken by women, may improve their financial situation. Probably, the contribution will not be adequate to planned expenditures however it is a significant one towards constantly increasing unemployment. Flexible forms of work provide women more independence and the sense of usefulness (Szczerbiński and Wasilewski 2011, p. 149 and next). Such an attitude is cohesive with Management intentions of many companies performing mailing services.

## **5. Work time of an employed person in mailing services and fees for standard letters**

Postal fees have changed throughout the years towards technology development and opportunities. In the 18<sup>th</sup> century and at the beginning of the 19<sup>th</sup> century in England, there was a peculiar postal system. Fees for delivering letters and parcels were fixed according to their weight and distance to their destination but it was a receiver not the sender who was obliged to pay for it. The British mailing minister Rowland Hill (1795-1879) suggested that the fees should be unified and paid by a sender and each letter and parcel should have a stamp attached as a proof that the fee was paid. The English mailing system adopted Hill's suggestions and issued the first post stamp on May 6<sup>th</sup>, 1840. There was a black and white portrait of Queen Victoria in it. The stamp cost 1 pence. It was named "Penny Black". Queen Victoria was so pleased of the portrait that ordered all further stamps printed during her cadence used the image from

Penny Back (she ruled for sixty three years). Rowland Hill was knighted as well. In 1843 Brazil and two Swiss cantons Zurich and Geneva implemented post stamps. The Basilea canton followed them in 1845. In 1847 the USA implemented post stamps printing two patterns, one of 5 cent value with an image of Benjamin Franklin and the other of 10 cents with an image of George Washington. In 1849 France, Belgium and Bavaria issued their first stamps. Perforated stamp sheets were implemented by British Henry Ascher. Several months after issuing “Penny Black”, people began to collect stamps. In 1841 in the London Times there were announcements in which women asked readers for transferring them used stamps in order to wallpaper their rooms (Craughwell 2010, p. 226). Today, an operator providing common mailing services fixes the fees for the services. They should be defined with regards of costs of their providing. The rules of establishing fees for providing common mailing services should be unanimous in the territory of the whole country as well as clear and non-discriminating. An operator providing common mailing services may use a special fee for the services lower than the obligatory one for a given type or way of a service comparing to senders who perform agreed actions with an operator connected with preparation or working out shipment or they agree extra conditions within the way of providing a service and to senders sending a significant number of shipment during a period agreed with an operator providing that there are unanimous and equal criteria towards sender as for fees and conditions included in the agreement, the costs of providing a service are considered and overwhelm full range of the offered services connected with a particular mailing service or way or providing such service with distinguishing costs not paid due to limiting actions performed by an operator. The criteria of fixing special fees including particular provisions are listed in the regulations of providing a common mailing service and they may be found in the information available in all operator’s outposts where the services are provided pursuant to art. 50 par. 3-4 of the Mailing law (Strzyczkowski 2011, p. 538 and next).

Pursuant to art. 129 of the Labor code concerning the norm of work time, it may not extend eight hours a day and forty hours on average in five-day week adopted in a clearance period not longer than four

months. Moreover, according to art. 14 of the Labor code, the regulations provide an employee the right to relax in the days off work. The Labor code, pursuant to art. 138, constitutes that Sundays and holidays determined by separate articles are statutorily free from work. The Labor code does not say directly or unanimously that there is a ban to work on Sundays and holidays in Poland (Romer 2007 No 1, pp. 3-7). As regards the national operator, namely Poczta Polska, it is a municipality duty to define opening hours of trade outposts in a given city. However, it is an employer who is directly responsible for providing trade services on Sundays and holidays who is obliged to define work time of employees basing on the Labor code regulations. Work time as a rule should consider first of all the work of a department whose functioning is necessary to satisfy everyday needs. Particular range of work on Sundays and holidays should be determined in work regulations. Moreover, work regulations should include staff categorization who, due to their post, are obliged to work on Sundays and holidays. Such employees should have minimized working hours as much as possible (Muszalski 2006, p. 14).

Work time may be significant for defining remuneration for employees in the branch of mailing services may be reflected in in an operator's service pricelist. It is mainly the matter of reaching a company's financial result where incomes may cover costs generated by entities including those connected with employment. Costs may be also a determinant of an operator's service availability including economic availability connected with a company's price policy especially within prices for standard letters from the lowest weight range in an economic category as well as prices for national economic parcels of 1 kg and 5 kg weight in relation to an average monthly income for the disposal of households per capita and the minimum remuneration for work (*The system of period reports concerning the mailing service development market, competition and entities on the market* 2007, p. 65).

While determining conditions of remuneration and granting other benefits connected with work, each employer must remember that according to the Act from June 26<sup>th</sup>, 1974 the Labor code (Journal of laws No 24 pos. 141 with later amendments) remuneration should particularly (Wawrzyszczuk 2010, p. 14):

- respond the type of performer work,
- respond qualifications required for its performance,
- consider quantity and quality of performed work.

As regards remuneration, an employer is also obliged by the regulation of the act on minimum remuneration for work. The principles determined in the act guarantee a full time employee remuneration of 1,600.00 zlotys gross in 2013, pursuant to par. 1 of the Resolution of the Council of Ministers from September 2012 on the minimum remuneration for work in 2013 (Journal of laws No 0 pos. 1026) and 1680.00 zlotys gross in 2014 pursuant to art. 1 of the Resolution of the Council of ministers from September 11<sup>th</sup>, 2013 on minimum remuneration for work in 2014 (Journal of laws 2013 pos. 1074). While defining remuneration for a part time employee, an employer uses a principle of proportionality in that matter in relation to the number of hours to be worked by an employee in a given month. Remuneration for performed work is a significant element of a labor contract. The Labor code indicates that there should be the following information included:

- remuneration for work responding a kind of work with determining remuneration elements,
- work period.

There is close relation between those elements of a labor contract proving that work period, comprehended as full or part time employment significantly influence on the amount of remuneration established by the parties of the work relationship (an employer and employee). It means the amount of remuneration remains in relation to employment dimension adopted in a labor contract regardless the adopted principles of remuneration (established by constant a monthly or hour fee). Thus, while increasing time dimension to an employee, an employer should proportionally increase his/her remuneration. However, if not only time dimension but also task dimension or kind of work performed within full time are changed, it results in the necessity to adjust remuneration to those changes (Wawrzyszczuk 2010, p. 14). Minimum remuneration for work as well as an average monthly income for the disposal of households per capita seems to be the most proper category, based on which there may be economic availability of the selected

mailing services determined. An average monthly income for the disposal makes a value of real funds which an average person is able to dispose in an average household an minimum remuneration, as the name indicates, is a necessary minimum which a statistical consumer is able to dispose (*The system of period reports concerning the development of mailing services, competition and entities acting on the market 2007*, pp. 65-71).

There are values of the above mentioned amounts and their annual changes in the years 2006-2010 in Table 2 and Diagrams 1 and 2 below.

The prices of particular mailing services in a public operator's offer in the years 2006-2012 dynamically changed. There is a clear influence of market environment and a situation in the aspect of providing mailing services on a public operator's pricelist.

Together with private operators entering on the markets, Poczta Polska was forced to change its price strategy and adjust the offer to competition.

In case of national letters up to 50 grams, the change pace stopped in 2010. In the years 2011-2012 prices of national letters up to 50 grams was significantly lowered. In 2011 it was the decrease by 15% and in 2012 by another 7%. In 2012 the price for national letters up to 50 grams was equal to the price offered by the public operator in 2006.

In case of national parcels up to 1 kg, the pace decrease has been noticeable since 2006. Indeed, Poczta Polska increased prices for national parcels up to 1 kg every year but the market situation made the prices increased slower and in 2012 the operator decided keep the prices for national parcels up to 1 kg on the level from 2011. In the years 2006-2012 the price for national parcels up to 1 kg increased by 73% of the basis year 2006.

Nearly analogical situation occurred in case of prices for national parcels up to 5 kg. the prices for national parcels up to 5 kg increased every year until 2012 although the pace of price growth significantly fell down. After 2010 the public operator decided to stop the price growth and in 2011 the prices for national parcels up to 5 kg were kept on the level from 2010. In 2012 the price grew only by 4% comparably to the level of prices for national parcels up to 5kg in 2011. It should be noticed that in the years 2006-2012 the price for national parcels up to 5 kg grew by 53% of the basis year 2006.

**Table 2.** Prices for selected services in an economic category, selected economic categories and their changes in the years 2006-2012

Details	2006	2007	2008	2009	2010	2011	2012
	In zlotys						
Prices for national letters up to 50 grams (A)	1,30	1,35	1,45	1,55	1,65	1,40	1,30
Prices for national parcels up to 1 kg (B)	5,50	6,50	7,50	8,50	9,00	9,50	9,50
Prices for national parcels up to 5 kg (C)	8,50	9,50	10,50	11,50	12,50	12,50	13,00
Average monthly income for the disposal of households per capita (D)	802,43	842,55	1045,52	1114,49	1192,82	1226,95	1270,28
Minimum remuneration for work (E)	899,00	936,00	1126,00	1276,00	1317,00	1386,00	1500,00
Annual price changes of selected services of economic category, selected economic categories in the years 2006-2012 and their changes in 2012 comparably to 2006							
Details / Change pace	2007	2008	2010	2011	2012	Change 2012/2006	
Prices for national letters up to 50 grams	1,03	1,07	1,06	0,85	0,93	1,00	
Prices for national parcels up to 1 kg	1,18	1,15	1,06	1,06	1,00	1,73	
Prices for national parcels up to 5 kg	1,12	1,11	1,09	1,00	1,04	1,53	
Average monthly income for the disposal of households per capita	1,05	1,24	1,07	1,03	1,04	1,58	
Minimum remuneration for work	1,04	1,20	1,03	1,05	1,08	1,67	

**Source:** own work based on the data of Poczta Polska S.A. and the Main Statistic Office

**Specification:**

**A** – Prices for national letters up to 50 grams;

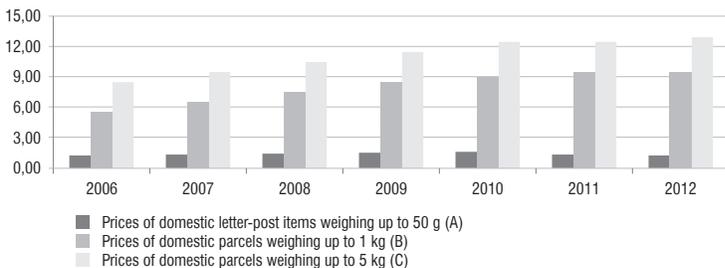
**B** – Prices for national parcels up to 1 kg;

**C** – Prices for national parcels up to 5 kg;

**D** – Average monthly income for the disposal of households per capita;

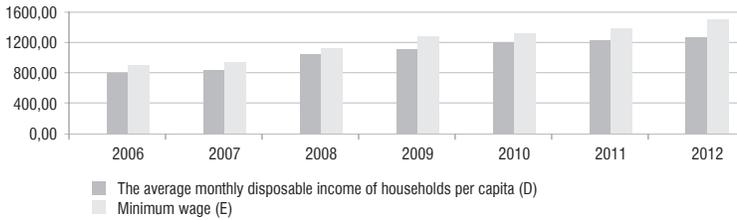
**E** – Minimum remuneration for work

**Diagram 1.** Prices for national letters and parcels in the years 2006-2012



**Source:** own work

**Diagram 2.** An average month income for the disposal of households per capita and minimum remuneration for work in the years 2006-2012



**Source:** own work

A significant work time confrontation indicator of those employed in mailing services and fees for standard letters is also an average monthly income for the disposal of household per capita and minimum remuneration for work. An average monthly income for the disposal of households per capita significantly grew in 2008 when there was growth by 19% comparably to the level from 2007. In the years 2009-2010 there was further increase. Both years were characterized by the same pace of price growth on the level of 7% in a yearly scale. In 2011 there was further price growth by 3% and in 2012 there was growth by another 4%. In the examined years an average monthly income for the disposal of households per capita grew by 58%. The basis year was 2006.

Minimum remuneration for work also grew significantly. Similarly to an average monthly income for the disposal of households per capita, the biggest pace of price growth occurred in 2008 when the minimum remuneration for work grew by 20% comparably to 2007. There was also big pace of price growth in 2009 when the minimum remuneration for work increased by 13% comparably to the previous year. Further years of the analysis, namely 201-2012, mean further growth of the minimum remuneration for work. An average pace of price growth in that time was 5.33% in a yearly scale. In the examined years the minimum remuneration for work grew by 67%. He basis year was 2006.

Economic availability measured by the number of services which a potential customer of mailing services may purchase for the amount of the income for the disposal in a household per capita referring to the kind of a service purchased as agreed in the years 2006-2012 has been presented in Table 3 and Diagram 3 below.

**Table 3.** Economic accessibility measured with the number of services that a potential consumer of mailing services may purchase for the amount of the income for the disposal per capita in a household with regards to the type of the purchased service as agreed in the years 2006-2012

Details	2006	2007	2008	2009	2010	2011	2012
	In zlotys						
D/A	617.25	624.11	721.05	719.03	722.92	876.39	977.14
D/B	145.90	129.62	139.40	131.12	132.54	129.15	133.71
D/C	94.40	88.69	99.57	96.91	95.43	98.16	97.71
Annual changes of economic availability measured by the relation of an income for the disposal to the prices of selected common services in the years 2006-2012 and its changes in 2012 towards 2006							
Details / Change pace	2007	2008	2009	2010	2011	2012	Change 2012/2006
D/A	1.01	1.16	1.00	1.01	1.21	1.11	1.58
D/B	0.89	1.08	0.94	1.01	0.97	1.04	0.92
D/C	0.94	1.12	0.97	0.98	1.03	1.00	1.04

**Source:** own work

**Specification:**

**A** – Prices for national letters up to 50 grams;

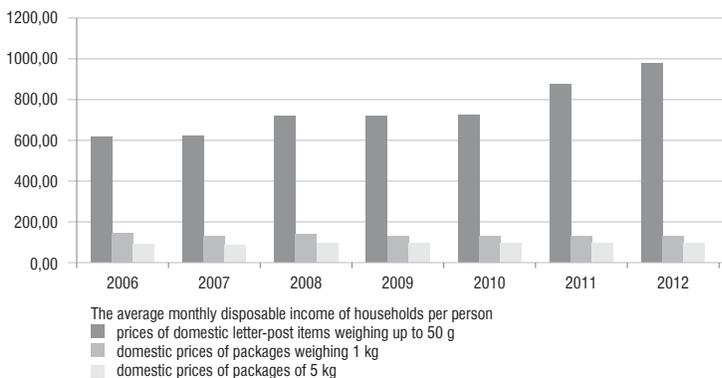
**B** – Prices for national parcels up to 1 kg;

**C** – Prices for national parcels up to 5 kg;

**D** – Average monthly income for the disposal of households per capita;

**E** – Minimum remuneration for work

**Diagram 3.** Economic accessibility measured with the number of services that a potential consumer of mailing services may purchase for the amount of the income for the disposal per capita in a household with regards to the type of the purchased service as agreed in the years 2006-2012



**Source:** own work

The annual availability changes of national letters up to 50 grams of economic category in the relations to an income of an individual in a household were as follows: in 2007 the availability grew by 1% in comparison to 2006 and in 2008 it grew by 16% comparing to the analogy earlier period. In 2009, purchase opportunities maintained almost on identical level as in 2008. In 2010 there was a noticeable growth which is more and more dynamic in every following year. In 2010 the availability grew by 1% in 2011 by 21% and in 2012 by another 11%. Consequently, while comparing the changes in the years 2006-2012, in the last period of the analysis, the economic availability measured by the relation of income for a disposal to national prices for letters up to 50 grams increased by 58% comparing to the level from 2006.

In case of prices for national parcels up to 1 kg, the availability changes in relation to income for the disposal of an individual in a household were as follows: in 2007 there was decrease of economic availability by 11%. In 2008 the economic availability measured by income for the disposal to the prices for national parcels up to 1kg grew by 8% comparing to 2007. In 2009 there was another decrease of economic availability by 6%. In 2010 there was growth by 1%, in 2011, another fall by 3% and in 2012 – growth by 4%. While analyzing the changes from 2006 to 2012, the economic availability measured by the relation of income for the disposal to the prices for national parcels up to 1kg decreased by 8% comparing to the level from 2006.

Analogy sinusoid of changes characterized the economic availability measured by the relation of income for the disposal to the prices for national parcels up to 5 kg. In 2007 there was decrease of economic availability by 6%, in 2008 – growth by 12%, in 2009 – fall by 3%, in 2010, another fall by 2%, in 2011 – increase by 3% which maintained in 2011 on almost the same level. In 2012 the availability grew by 4%. The economic availability measured by the relation of income for the disposal to the prices for national parcels up to 5kg increased by 4% in 2012 comparing to the level from 2006. The economic availability measured by the relation of minimum remuneration for work to the prices of selected common services in relation to the kind of purchased service as agreed in the years 2006-2012 was presented in Table 4 as below.

**Table 4.** Economic accessibility measured with the relations of minimum income for work to prices of the selected common services with regards to the type of service purchased as agreed in the years 2006-2012

Details	2006	2007	2008	2009	2010	2011	2012
	In zlotys						
E/A	691.54	693.33	776.55	823.23	798.18	990.00	1,153.85
E/B	163.45	144.00	150.13	150.12	146.33	145.89	157.89
E/C	105.76	98.53	107.24	110.96	105.36	110.88	115.38
Annual changes of economic availability measured by the relations of income for the disposal to the prices for selected common services in the years 2006 - 2012 and its changes in 2012 in relation to 2006							
Details / Pace of changes	2007	2008	2009	2010	2011	2012	Change 2012/2006
E/A	1.00	1.12	1.06	0.97	1.24	1.17	1.67
E/B	0.88	1.04	1.00	0.97	1.00	1.08	0.97
E/C	0.93	1.09	1.03	0.95	1.05	1.04	1.09

**Source:** own work

**Specification:**

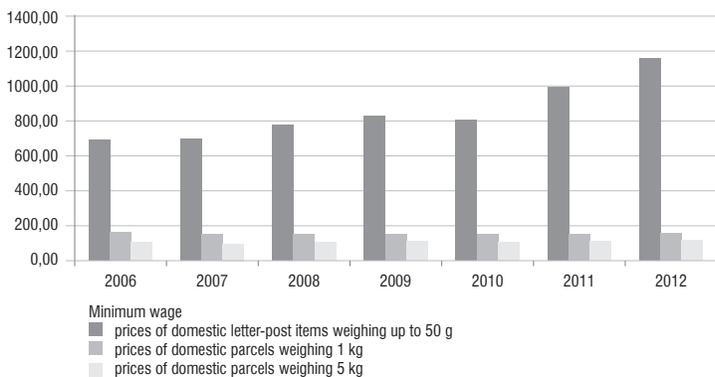
**A** – Prices for national letters up to 50 grams;

**B** – Prices for national parcels up to 1 kg;

**C** – Prices for national parcels up to 5 kg;

**E** – Minimum remuneration for work

**Diagram 4.** Economic accessibility measured with the relations of minimum income for work to prices of the selected common services with regards to the type of service purchased as agreed in the years 2006-2012



**Source:** own work

Economic availability measured by the relation of minimum remuneration for work to the prices for national letters up to 50 grams in the years 2006-2012 grew more often. In 2007, the economic availability maintained almost on the same level as in 2006. In 2008, there was growth of the availability measured by the relation of minimum remuneration for work to the prices for national letters up to 50 grams by 12% comparing to the analogy earlier period. In 2009 there was further growth of the availability by another 6%. In 2010 there was decrease by 3% comparing to 2009. In 2011 there was growth of the availability by 24% and in 2012 further growth by another 17%. While analyzing the changes from 2006 to 2012, the economic availability measure by the relation of minimum remuneration for work to the prices for national letters up to 50 grams increased by 67% comparing to the level from 2006.

In case of the economic availability measure by the relation of minimum remuneration for work to the prices for national parcels up to 1 kg in the years 2006-2012 hesitated more often. In 2007 there was fall of the availability by 12% comparing to 2006. In 2008 there was growth of the availability by 4% in relation to the data from 2007. In 2009 the economic availability measured by the relation of minimum remuneration for work to the prices for national parcels up to 1 kg maintained on the level from the previous year. In 2010 there was decrease by 3%. In 2011, the economic availability maintained in the level similar to that from 2010. In 2012 there was growth by 8%. While analyzing the changes from 2006 to 2012, the economic availability measured by the relation of minimum remuneration for work to the prices for national parcels up to 1kg decreased by 3% comparing to the level from 2006.

The economic availability measured by the relations of minimum remuneration for work to the prices for national parcels up to 5kg grew more often in the years 2006-2012. In 2007 there was fall of the economic availability by 7% comparing the data from 2006. In 2008 the economic availability grew by 9% and in 2009 there was growth by another 3%. In 2010 there was lowering of the availability by 5% and in 2011 it grew by 5%. In 2012 the economic availability increased by another 4% comparing to 2011. While analyzing the changes from 2006 to 2012, the economic availability measured by the relation of minimum remuneration

for work to the prices for national parcels up to 5 kg increased by 9% comparing to the level from 2006. The economic availability measured by the number of services which a potential consumer of mailing services may purchase for the amount making income for the disposal per capita in a household in relation to the kind of service purchased as agreed or the economic availability measured by the relation of minimum remuneration for work to the prices for common services in relation to service purchased as agreed are dependent on the factors determined in the scale of the whole country (income for the disposal per capita in a household or minimum remuneration for work by values which mostly depend on a state government decisions).

There are numerous factors which may be adjusted individually to its activity (especially private mailing operators) and the factors influence the amount of fees for standard letters. It is mainly the matter of regional competitiveness and the level of employment in a company.

The objective described as regional competitiveness and employment in mailing services concerns all areas of the EU. Strategic guidelines consider the investment needs both in urban and rural areas taking account on their role in local development and considering promotion of balanced development, balanced communities and social integration. Within the objective, there are two elements treated with priority (Noworól 2007, p. 64):

- local competitiveness: innovation and society based on knowledge, access to a service, environment and preventing from threats, participation of cities in local management;
- employment (based on the European employment strategy): adaptation of labor forces, creating work places, availability of work.

To sum up, economic availability economic availability of mailing services is both dependent on such factors as income for the disposal per capita in a household or minimum remuneration for work but mainly commercial enterprises acting on the mailing service market may determine economic availability themselves using effective marketing instruments and PR supporting its actions by the EU's guidelines within competitiveness.



CHAPTER 4

**Mailing services and their rationing,  
the analysis in the light of the EU's  
regulations and the Polish law**

# 1. Introduction

The mailing activity in Poland within particular mailing services requires permission issued on the way of administrative decisions by the President of Electronic Communication Office. In the remaining range it is an activity regulated by the Act from July 2<sup>nd</sup>, 2004 on the freedom of economic activity (Journal of Laws 2004 No 173 pos. 1807 with later amendments) and its performance is subject to entering the register of mailing operators. The mailing services concerning collecting, transferring and delivering non-addressed forms or an activity performed by a mailing agent on the basis of agent agreement concluded with an operator do not require entering to the register, pursuant to the Act from April 23<sup>rd</sup>, 1964 – The Civil code (Journal of laws 1964 No 16 pos. 93 with later amendments).

The other services than mailing ones were specified in art. 132 par. 3. The regulation includes the catalogue of closed relative services. It should be comprehended pursuant the definition included in art. 6 par. 2 l. c of the sector Directive which specified the kinds if financial services mentioned in art. 132 par. 3. Moreover, the sector Directive clearly indicates that the other services than mailing ones are overwhelmed by its regime only and exclusively in case when a subject dealing with it provides also mailing services. Therefore, either performing activity only within mailing services or cumulative performing both types of activity is overwhelmed by the obligation of respecting sector regulations. The same principle was adopted in Poland which results *expresis verbis* in art. 132 par. 3. Therefore, if a given entity conducts activity within logistic services in the above comprehension or parcel insurance service and do not deal with providing mailing services sensu stricto such an activity does not have a sector character. The activity mentioned in art. 132 par. 1 p. 7 of the Act the Law of public orders is subject to sector principles only when it is conducted by ordering entities according to art. 3 par. 1 p. 3 and art. 3 par. 1 p. 4 or their relations. In this place, it should be indicated, for instance, that the public operator Poczta Polska is overwhelmed by an obligation to use sector regulations. Private entrepreneurs may be considered purchasers only when they perform their activity on the basis of particular or exclusive

rights. In such a case, it would be necessary to determine the character of permission or other entitlements granted to an entrepreneur on the basis of qualifying them as particular or exclusive rights. Not repeating the analysis occurring in other parts of the comment, it should be only mentioned that the rights granted on the basis of the procedures not limiting competition, are not the exclusive or special rights. As it is properly highlighted in literature, the requirement possessing permits to provide certain mailing services may be caused by safety reasons and respecting public order or arouse due to the necessity to provide correct services (Kowalczyk and Szymańska 2011, pp. 180-187).

## **2. Factors influencing the quality of mailing services and legal regulations**

Services generate nearly 70% of the Polish National Gross Product and their importance in the economy is still increasing since social work division is still deepening in the manufacturing sphere including the agricultural one.

Service development is also determined by (Pepliński 2009, p. 169 and next):

- technology advance,
- civilization advance,
- growth of production concentration,
- capital absorbing growth,
- increasing specialization of enterprises.

The institutional development within public services has been described as preparation and using public services standards, planning to provide public services according to schemes of providing public services organization and using improvement mechanisms to provide public services. Highlighting the importance of public usage services for shaping the social and economic development principles and the necessity to define and delimitate

them aims at unanimous indicating entities which should care for their proper specification and performance. It is the matter of practical value identification of the solutions of theory and practice of new public management since improvement of public usage services management is performed by increasing common availability and improvement of services provided by the units of public administration and other entities realizing social objectives and acting as public organizations. Common availability observed nowadays and quality improvement are the result of properly service management by managers employed in public organizations who care for providing the conditions of its effective performance basing on defined standards and determined service providers' market (Frączkiewicz-Wronka 2009, p. 43 and next).

Mailing services quality is determined by:

- a. reliability,
- b. prompt reaction, namely providing assistance in order to assuring quick service,
- c. certainty of its reaching resulting from a company's quality and employees' professionalism and kindness,
- d. empathy expressed by individual attitude towards servicing each customer,
- e. touchability, i.e. aiming at assuring a service the features of reality, namely equipment, material proofs of service disposal, etc. (the success of mailing services provider is also based mostly on a service outpost location).

Due to the destination, mailing services may be divided into:

- a. services for entrepreneurs, namely those destined for production, service, trade and other units,
- b. those for people, namely provided to individual consumers.

Regulation frames for the mailing sector on the EU's level have been included in Directive 97/67/WE. It also determined measures guaranteeing both common mailing service and indicating maximum limits for mailing services which may be prosecuted by the member states for own operator providing a common service intending to maintain a common service and the limits are supposed to be gradually and progressively reduced. It also established activity schedule connected with making deci-

sions on further market opening to competition in order to create a market of internal mailing services. The Directive obliged the member states to indicate a national regulating body in order to assure proper functioning of common services and providing undisturbed competition within a non-restricted area. Those bodies should be legally separate and functionally independent from mailing operators (Strzyczkowski 2011, p. 518). Directive 97/67/WE was amended by Directive 2002/39/WE. The preamble of Directive 2002/39/WE from June 10<sup>th</sup>, 2002 claimed the necessity to create modern legal frames in order to strengthen an internal market for mailing services and formulating the schedule of gradual and controlled opening of mailing service market with the guarantee of common service continuity. A significant step on the way to open a mailing service market was lowering the limit of the service weight (up to 100 grams in 2003 and 50 grams in 2006) which could have been restricted for operators providing common services connected with full opening to competition of mailing outgoing abroad with the exceptions to assure providing a common service. The member states should be still provided restricting certain mailing services for their operators providing common services. The role of national regulation bodies should be confirmed and strengthened especially within the restricted services security. While realizing the adopted assumptions, directive 2002/39/WE lowered weight divisions of restricted services for operators providing common services; it maintained direct mail in the necessity range to assure common services which may be restricted in the same weight and price limits; mails outgoing abroad may be still restricted within the same weight and price limits (art. 7 par. 1 of directive 97/67/WE implemented the principles of establishing special fees), (art. 12 of directive 97/67/WE implemented certain ban to cross subsidizing of common mailing services beyond the restricted sector); it widened the range of complaining procedures beyond the range of common services and within common services but not provided by an operator providing common services (art. 19 par. 1 and 2 of directive 97/67/WE); it determined the tasks of national regulation bodies, namely providing accordance with the duties determined in the directive more precisely comparing to the previous legal status and, when it is necessary, establishing procedures and instruments of controlling the realization of restricted

services (art. 22 par. 3 of directive 97/67/WK); it determined the date of power loss on 31<sup>st</sup> December 2008, binding with the exclusion of art. 26 unless it is agreed otherwise pursuant to art. 7 par. 3 (Strzyczkowski 2011, p. 519). The European Parliament and the Council of the European Union adopted directive 2008/6/WE changing directive 97/67/WE on 20<sup>th</sup> February 2008 in relation to the full realization of the EU's mailing services internal market. The legal solutions of the directive aim at: firstly, creating a mailing services internal market by elimination of exclusive and particular rights to economic activity in the mailing sector, secondly, guaranteeing equal level of common services for all users in all EU's states, thirdly, establishing harmonious principles of mailing service regulations in the conditions of open market aiming at limiting other disturbances in functioning of an internal market.

### **3. Liberalization of the mailing service market in the European Union**

Market mechanisms play a significant role in shaping a mailing services sector. Implementation of regulative limits, widening national competences of regulative bodies, whose responsibility range concerns three spheres, have become the result of the evolution (Chałubińska-Jenkiewicz 2011, p. 164):

- regulation of the access to the market,
- regulation of the access to infrastructure,
- regulation connected with the social needs (realization of a common service).

Directive 2008/6/WE completes the process of mailing services liberalization that began in directive 97/67/WE continued in changing directive 2002/39/WE. The mailing sector liberalization meant gradual narrowing the range of restricted services, namely common mailing services whose performance is restricted by the state on the basis of exclusion for a par-

tical national operator or several national operators. The range of restricted services was indicated by a unit weight and postal fee. A restricted shipment might have been performed by an alternative operator however for a minimum fee indicated in the EU's regulations. Member states were devoid the right to admit or maintain exclusive rights to perform mailing services pursuant to art. 1 p. 8 of directive 2008/6/WE changing art. 7 of directive 97/67/WE in relation to art. 2 of directive 2008/6/WE on January 1<sup>st</sup>, 2011. Some member states, including Poland, could postpone the date of the directive implementation until December 31<sup>st</sup>, 2012 at maintain restricted services for the operator performing a common service. After the date, the mailing service market was opened in full which means the opportunity to enter mailing service market by the operators from other member states. The member states which did not use the two year transformation period and completely abolished the limits of access to the market before December 31<sup>st</sup>, 2012 could refuse entering the market to the operators performing restricted mailing services in their countries of origin (art. 3 of directive 2008/6/WE).

The easiest way, thanks to which the European integration realizes the principle of flexibility, is the transformation period. Each transformation period means suspending the use of law on a particular territory on a precisely fixed time. There is an assumption accompanying to the use of the instrument that with the time devoted to the transformation period the law in a certain area in a given territory will be binding in full. In other words, the aim of each transformation period is extending the European law in future on the whole territory of the European Union. Transformation periods have been used in the process of integration from the very beginning, from the Treaty of Paris on the European Community of Coal and Steel (1952) until today in the joining treaties of new member states (2004 and 2007). The more common case of establishing transformation periods are the assumptions concerning them in particular directives which exclude their use towards determined member states. They enable particular member states, regions or economic entities smoother reaching commonly adopted standards. It means providing a longer period to be adjusted to the EU's legal requirements. Establishing such transformation periods often occurs due to the concerns expressed by states

in the process of creating certain legal acts and as a result of negotiations between states. Thus, transformation periods make one of the basic negotiation instruments to reach an agreement between all states (Jesień 2011, p. 286).

As a consequence of limiting exclusive rights in the mailing services sector, there are market mechanisms, particularly competitive rules, increase of the number of entrepreneurs providing mailing services, there are new services implemented and their quality is improved (Strzyczkowski 2011, p. 519). Protection of competition as a mechanisms of economy functioning is performed due to the fact that practices infringing particular regulations of the act, particularly the ban to conclude agreements limiting competition, they threaten a consumer's wealth and being contrary to the foremost function of the act, they should be severely punished (The Verdict of the Supreme Court from 19<sup>th</sup> October 2006 III SK 15/06, OSNP 2007, No 21-22, pos. 337).

The regulations within agreements limiting competition play a significant role on the mailing services market. Forbidden agreements limiting competition cause the conditions of goods sale, including prices are less favorable than those in the free market conditions, therefore with the loss for purchasers. It should be indicated that the aim of the ban to the agreements limiting competition is optimization of economic activity effectiveness and protection of consumers' interests which belong to the weakest participants of the market. For consumers, competition means lower prices, wider selection and higher quality of goods and services as well as opportunity to make reasonable choices of such products that satisfy their needs as much as possible (Sieradzka 2012, p. 126).

Directive 2008/6/WE ascribe a particular significance to the solutions guaranteeing providing common mailing services in the member states. The directive imposes an obligation to each member state to assure that providing a common service is guaranteed and the Commission is informed in the actions which were undertaken in order to fulfill that duty (art. 4 of directive 97/96). Simultaneously, the directive claims that a bigger competition and wider selection of operators providing mailing services mean that the member states should be more flexible within the most effective and appropriate mechanism guaranteeing availability of a common

service with simultaneous respecting the principles of neutrality, transparency, non-discrimination, proportionality and minimization of disturbances on the market which is necessary to provide free mailing services providing on the internal market (p. 23 of the preamble).

Systematic improvement of public services requires considering demand and supply. Demand is determined by a customer's wishes and expectations. Supply is a service which may be offered by a mailing operator. The elements being a subject of public services monitoring are customer's expectations, providing services by local authorities and an agreement binding in contacts between a customer and local authorities. A significant mechanism of public services improvement is shaping a service market. A mailing services market has a natural monopoly and indeed it may freely (within the binding law) shape a service providers' market. It occurs by influencing a service market, coordination of actions within re-arrangement of units, commercialization and privatization. It is also important to use a public orders mechanism to maintain a balance between demand (also in relation to a service quality) and supply of services namely rationalization of their performance.

Improvement of public services management is performed by increasing common availability of services and improvement of provided services which is the result of proper service management and providing conditions to effective realization of services basing on defined standards and determined market of service providers (Borowiec 2007, p. 136). The definition of a common service is included in directive 97/67/WE whose p. 11 of the preamble constitutes that a common mailing service overwhelms constant providing of a mailing service of a particular quality throughout the territory of a member state for reasonable prices for all users, pursuant to art. 3 par. 4 and 5 of directive 97/67/WE in relation to art. 1 p. 3 of directive 2008/6/WE, the member states are obliged to provide the following services within a common service: collecting, sorting, transferring and delivering parcels up to 2 kg, collecting, sorting, transferring and delivering parcels up to 10kg (with the possibility to increase the limit up to 20kg), services overwhelming registered and valuable shipment (Strzyczkowski 2011, pp. 518-520).

## 4. The Green Book concerning the development of homogenous market of mailing services

The process of EU's regulation (liberalization) of mailing services was started by the resolution of the European Parliament from January 22<sup>nd</sup>, 1993 concerning the Green Book of the development of unanimous mailing services market. Next, there was a resolution of the Council passed from 7<sup>th</sup> February 1994 concerning the development of the EU's mailing services, its publication was preceded by adopting the Green Book by the Commission of the development of unanimous mailing services market on June 11<sup>th</sup>, 1992 and the communicate on guidelines for the development of the EU's mailing services.

The final of the undertaken actions aiming at creating an internal market in the mailing sector is directive 97/67/WE of the parliament and the Council from 15<sup>th</sup> December 1997 concerning common principles of the EU's mailing services internal market development and improvement of the services quality changed by directive 2002/39/WK of the European Parliament and the Council from June 10<sup>th</sup>, 2002 changing directive 97/67/WE within further opening to the competition of the EU's mailing services by the decree No 1882/2003 and directive of the European Parliament and the Council 2008/6/WE from February 20<sup>th</sup>, 2008 changing directive 97/67/WE in relations to full realization of the EU's mailing services internal market (Strzyczkowski 2011, p. 517).

Building a unanimous service market as a condition to effective realization of the Lisbon Strategy was indicated in the regulative initiative of Activity plan. It aim was to review and complete the existing legal frames in order to increase integration and effectiveness of the EU's services market. Nowadays, there is a process of implementation of the directives adopted within its frames to the legal orders of the member states. Thus, challenges and assumptions of the Plan still remain live, since the European market integration is a constant and unfinished process. The regulations in the area of mailing services market established within finishing an internal market building were insufficient. It was agreed that creating a unanimous mailing services market is a key matter for further economic

development of the EU, it makes a condition to trans-border services development. Indeed, it is also a principal factor of the EU competitiveness (Jurkowska-Zeidler 2008, p. 105).

The Commission, while summarizing contemporary achievements in the discussed range, admitted that the EU's bodies lack a clear vision as for the image of a common market and how it should be reached. Simultaneously, the Commission expressed the will of firm change of that unfavorable situation. There have been principal barriers identified in the Green Book which disturb realization of the common market idea. Those barriers include: physical barriers (controls on borders of particular member states), technical barriers (resulting from the existence of different technical standards in particular member states) and fiscal barriers (resulting from different tax systems in the member states), there were also high costs and other unfavorable effects highlighted, resulting from further maintenance of those barriers.

The Commission claimed in the Green Book that eliminating physical barriers (namely border controls) however significant, does not cause arousing a real common market. Goods and persons moving within the Union should not meet any barriers not only on borders but also inside particular member states (while the internal barriers are first of all those technical ones). Indeed, it does not mean that the same legal regulations should be respected everywhere however goods and persons must have an opportunity to free circulation within the whole Union. A general principle should be that a product which is legally produced and implemented into the turnover of one member state must be allowed to the turnover (commercialization) also in other member states (it is a principle of mutual recognition). The above principle, in the opinion of the Commission, should be an effective instrument for the realization of a common market in a trade sense. Simultaneously, the Commission noticed that the principle of mutual recognition may indeed to removing barriers in trade and create a common market in a trade comprehension it is insufficient for building a widening market based on competitiveness, namely a unanimous market in a most part of the continent. Certain additional actions are needed to it, i.e. harmonic legal actions (approaching to each other) of member states. On the other hand, a total harmonization would not be good

as desired since it could cause an effect of re-regulating the mailing services market, it would take much time for implementation and it would lead to suppressing innovativeness if the adopted regulations were not flexible enough. Thus, according to the Commission, the best solution is a reasonable balance and combination of both mentioned attitudes, i.e. the principles of mutual recognition and harmonization. The Commission declared that it, in its future actions, will aim at strict identification of those issues that should be harmonious in the EU's scale and those issues that could be left to the mutual recognition and need not to be harmonized.

The Commission announced that such national regulations which realize certain imperative requirements in a disproportional way will be the subject of harmonization and make unjustified barriers for the mailing services development. Moreover, basic health and safety requirements will be overwhelmed by harmonization, those concerning certain group of products and the accordance of those products with the mentioned requirements, created in a harmonizing directive, allow to free flow of given goods. The Commission will not undertake any harmonizing initiatives in that matter and it will rely on the principle of mutual recognition (Szydło 2008, p. 59). The Commission highlighted in the Green Book the significance of infrastructure for competition development on the EU's mailing services market. However it did not decide to suggest member states to abolish exclusive and special regulations for the sector. Lack of liberalization of the market of telecommunication instruments and services were explained by the necessity to provide financial stability of public enterprises in order to continue fulfilling public tasks indicated for them. Thanks to it, the enterprises could keep exclusive and special regulations within delivering and exploitation of network infrastructure in all member states (Ogonowska 2003, p. 23).

## 5. The Directives concerning common rules and improvement of the quality service

Mailing services were added to the subject catalogue of sector orders by the amendment of the Act on Public orders from April 7<sup>th</sup>, 2006 which came into force on May 25<sup>th</sup>, 2006. It was a consequence of the implementation of a new sector Directive which overwhelmed entities granting orders connected with providing mailing services by them and, having satisfied certain conditions, also other services connected with the mailing market. It was highlighted in the justification of the project of the mentioned amendment of the Law of public orders that before its passing, Poczta Polska was obliged to use the Law of public orders as other legal persons established for a particular aim of satisfying needs of a common character having no industrial or trade character (pursuant to art. 3 par. 1 p. 3 of the Act from January 29<sup>th</sup>, 2004, The Law of public orders), namely on general principles. Overwhelming it by the regime of sector orders shall result in the same amount of duties as the entities from other member states performing similar tasks (Kowalczyk 2011, p. 180). Common assuring a certain set of telecommunication services of a fixed quality and for reasonable price should be first of all left to a normally functioning market. However if the market itself is not able to provide access to a common service, a state intervention is necessary. It results in imposing an obligation to provide a common service to an indicated enterprise. The issue is complicated since performing services included in its range is connected with additional charge to enterprises. Thus, a resident operator is in the easiest situation which “due to certain circumstances in the policy of establishing fees may have significant reserves and relatively ease to face additional charges. If the cost of realization of a duty will be too big challenge (...) it may indicate the least income cost connected with realization of the duty” (Streżyńska 2002, p. 40).

In the initial period of liberalization of the telecommunication sector those operators performed services included in the range of a common service. They were granted additional benefits for it guaranteeing funds for realization common services.

However, the models seem to be against, there are indirect models possible whose tendency to dominance (through property concentration) is limited and revealed by opposite political and social movements and partially rejected by receivers. In a free society, minorities and opposition groups have own press and other alternative media which partially control a dominant system of common services (Streżyńska 2002, p. 115). The evolution of structures and areas of the mailing services market as an area of telecommunication services may be perfectly presented on the example of the Netherlands. In the state, KPN, full name is Koninklijke N.V., or also known as Royal KPN N.V.; is a Dutch company of stationary and mobile telecommunication is an entity traditionally responsible for the access to basic telecommunication services, namely for providing a set of services included in common services. Initially, it was connected with its position of a public entity and monopolist in the sector of telecommunication. Next, during the ruling of the telecommunication law from 1988 an obligation to provide a common service was connected with granting a resident operator a particular status of a license owner admitting it particular exclusive rights in the sector of telecommunication imposing to it an obligation to provide an access to basic telecommunication services instead, whose range was determined in a governmental decree (art. 4.1. Wtv).

The Netherlands implemented in full provisions of directives within indicating entities obliged to providing services within a common service to its legal order. If a resident operator resigned from providing a common service, which is unlikely while considering contemporary KPN policy, there will be proper Tw regulations used pursuant to art. 9.2 Directives 2002/22/WE of the European Parliament and the Council from March 7<sup>th</sup>, 2002 concerning a common service and users' rights connected with networks and electronic communication services.

It is worth highlighting that the requirements within imposing an obligation to provide a common service on entities included in art. 8 of directive 2002/22/WE were formulated in a general way. States reached a significant implementation freedom limited only by the principles of: effectiveness, neutrality, transparency and non-discrimination as well as the necessity to guarantee an economic providing a common service (Galewska 2007, p. 158).

Despite a resident operator seems to be the most natural candidate to provide a common service due to the scale of its entity however the regulations of telecommunication directives do not link the obligation only with that entity. Directive 98/10/WE generally constituted that indicating entities obliged to providing the mentioned service should occur “on the basis of objective criteria” and “with consideration of abilities and motivation of entities to provide services in full or partially if it is necessary” (p. 6 of the preamble). Similarly, art. 8 of directive 2002/22/WE presumes the opportunity to impose the obligation also on other enterprises than the resident operator. The decision in the matter of imposing the obligation of a common service belongs to particular member states which also agree criteria to be used with the choice. Undoubtedly, a basic criterion must be the ability of a given enterprise to provide a common service in the most profitable way as well as its will to undertake such duties (p. 14 of the preamble). The member states may indicate one enterprise obliged to provide a common service throughout the whole territory of a given state but they also may “indicate different enterprises or groups of enterprises to provide different elements of a common service or in different parts of the territory of a given state”, pursuant to art. 8.1 of directive 2002/22/WE of the European Parliament and the Council from March 7<sup>th</sup>, 2002 concerning a common service and users’ rights connected with networks and electronic communication services (Journal of Laws L 108 from 24<sup>th</sup> April 2002, p. 51). It is necessary for the indication of those enterprises to occur in a neutral, transparent and no-discriminant way, so that one of them was *a priori* excluded pursuant to art. 8.2. of directive 2002/22/WE of the European Parliament and the Council from March 7<sup>th</sup>, 2002 concerning a common service and users’ rights connected with networks and electronic communication services.

Directive of the Council 92/13/EWG from February 25<sup>th</sup>, 1992 coordinating the legislative, executive and administrative regulations referring to the use of the EU’s regulations in the procedures of public orders of the entities acting in the sectors of water, power, transport and telecommunication sectors (Journal of Laws L 76 from March 23<sup>rd</sup>, 1992, p. 14) refers to infringement within sector orders and measures for legal protection to prevent from the indicated infringements whereby it is often

put opposite Directive of the Council 98/665 from December 21<sup>st</sup>, 1989 concerning the coordination of legislative, executive and administrative regulations referring to the use of appealing procedures within granting public orders for supplies and contractor works (Journal of Laws WE L 395 from December 30<sup>th</sup>, 1989, p. 33 with later amendments) referring to the infringements within classical orders. The both directives recently appointed were modified by Directive 2007/66/WE of the European Parliament and the Council from December 11<sup>th</sup>, 2007 amending directives of the Council 89/665/EWG and 92/12/EWG within the improvement of effectiveness of appealing procedures in the area of granting public orders (Journal of Laws EU L 335 from December 20<sup>th</sup>, 2007, p. 31).

CHAPTER 5

# **Legal and international aspects of mailing services**

# 1. Introduction

The rights of mailing services users are subject to protection by indicating necessary features and conditions to provide a common service pursuant to art. 5 par. 1 of directive 97/67/WE. Member states may allow abandoning the indicated features and conditions by the operators providing a common service only in justified cases of a public interest determined in art. 36 TFEU or in art. 52 TFEU concerning public morality and public safety including investigations in criminal cases and public order (art. 5 par. 2 of directive 97/67/WR in relation to art. 1 p. 5 of directive 2008/6/WE).

The features and conditions to provide a common service are as follow: accordance of a service with basic requirements (keeping mailing secret, protection of personal data, safety in the Net), providing users the same services in comparable conditions, non-discriminative availability to services, continuity of services (excluding force majeure cases), adjusting the way of providing services to technology, economic and social advance and users' needs.

Each member state is obliged to indicate one or more national regulative bodies for a mailing sector which will function legally separate and functionally independent from mailing operators. Member states while preserving ownership or control over the operators providing mailing services (public enterprises), provide real structural division of regulative functions from operational actions.

A particular task of national regulative bodies is providing a common service according to the duties presumed in the directive. A national regulative body may be granted responsibility for respecting the competitive rules in the mailing sector.

Member states are obliged to provide rights for users or entities performing mailing services to appeal from each decision of a national regulative body to an independent appeal body. Until the verdict on such appealing a regulative body decision remains in force unless an appeal body decides otherwise, pursuant to art. 22 in the amended version by directive 2002/39/WE (Strzyczkowski 2011, p. 524).

Contemporary technology and telecommunication has a significant impact on mailing services as well. Present technologies give also opportunities to strengthen the protection of our private life. The legislator consciously

imposes an obligation for the entities providing telecommunication services and other ones via electronic way in order to enable customers using certain technology facilities. While discussing the range of telecommunication secret as well as rights and duties connected with it, there should be indicated that it overwhelms as follows (Mednis 2006, pp. 155-157):

- data concerning a user (first of all personal data with considering that a user may be a legal person as well),
- content of individual communicates,
- transmission data which mean transmitted information in order to transfer communicates in the telecommunication nets or charging fees for telecommunication services including location data which indicate all data transformed in the telecommunication net determining geographical location of a user's final device of available telecommunication services in public,
- data on location which overwhelms location data extending beyond the necessary to transmission of a communicate or issuing a bill,
- data concerning attempts to reach connection between particular ending of a telecommunication net.

## **2. The role and influence of the World Mailing Association on the shaping of mailing service standards**

Transport of dispatch has been connected with the need to conclude an agreement with an addressee's state since the 19<sup>th</sup> century. Primarily those were bilateral agreements that were next changed into regional ones concluded on the territory of a foreign country.

In 1863 there was an International Mailing Congress held in the United States. During the congress, Postmaster General, Montgomery Blair suggested unifying mutual mailing agreements. As a result it that, on August 15<sup>th</sup>, 1874 there was a conference of representatives from 22 countries

in Bern where the General Mailing Association was established. The treaty establishing the General Mailing Association was concluded on 9<sup>th</sup> October 1874 and it has been commemorated until today as the World's Mailing Day.

Since 1878 the organization has had a new name, the Universal Postal Union (UPU). There are the following basic provisions of the UPU:

- unification of fees for sending letters in any place in the world,
- equal treatment of foreign and national dispatch by mailing authorities.

Establishing the United Nation Organization in 1948 caused the UPU was changed into a special agenda of the UN. At that time the UPU started to maintain close relations with the International Telecommunication Union and the International Civil Aviation Organization.

The UPU, also known as the World's Mailing Association, is a non-political organization thus it is not involved in any matters concerning internal regulations within mailing operators' functioning. Thus, it remains national authorities the freedom to issue stamps, mailing fees, etc.

Nowadays, the UPU tasks are as follows:

- promoting international cooperation within performing mailing services,
- controlling mailing services development and strengthening its quality,
- providing technical assistance to member states,
- unification of mailing dispatch.

Mailing standards are the subject of the Council of Universal Postal Union Standards control which closely cooperates with mailing operators, customers, suppliers and other partners. Entities exchange information connected with performed mailing activity and promoting mailing initiatives in an international arena. The Council of Universal Postal Union's tasks also include determining standards connected with electronic data exchange, coding of mailing or standardization of dimensions and shapes of mailing dispatch.

Electronic shape of information transfer between computers via the Net prevail contemporary ways of communication since no envelopes, stamps, post codes, post seals, paper letter, mailboxes post offices or mes-

senger's companies are necessary. Computer data and information transmission is performed:

- faster, cheaper, easier, more comfortably,
- massively or individually without agency,
- at any time and from any place,
- with the use of various communication instruments.

It occurs with the opportunity to:

- select the content of communication and choice of their addressees,
- generate automatically the content and sending postal,
- free translation of texts and adjusting images,
- single or numerous sending any amount of content.

The initiatives aiming at recognition of certificates and documents submitted via electronic way to be significant are also undertaken by numerous international organizations. According to N. MacCormick and O. Weinberger's institutional positivism, shaping human behaviors within institutions is subject to exchange and stabilization of legal information between participants of certain social relations. Therefore, institutions are first of all arrangements. A basic meaning here is a communicative aspect of legal relations (Janowski 2008, p. 108 and next).

All countries belonging to the UN may become the members of the UPU as well as non UN members after the acceptance of 2/3 members of the UPU. According to the data from May 2012 the UPU had 192 members. The UN countries that are not the UPU members are as follow: Andorra, the Marshal Islands and Palau. As regards Taiwan, it represented China in the UN until 1971. The People's Republic of China may be the only Chinese representative of the UPU therefore mailing addresses to Taiwan is delivered by the third countries (similarly to the case of the Turkish Republic of Northern Cyprus where mailing is delivered by Turkey or in case of Somaliland, by Ethiopia).

The bodies of the UPU are:

- a. the Universal Mailing Congress,
- b. the Administrative Council,
- c. the Mailing Operational Council,
- d. the International Office,
- e. the Consulting Committee.

The Universal Mailing Congress is a basic and the most important body of the UPU. Its entitlements are so significant that it may submit amendments to a state's constitution. Therefore, its competences include legislative activity. Moreover, the Mailing Congress approves the World's Mailing Strategy. The Universal Mailing Congress consists of 1500 delegates who call the Congress every 4 years.

The UPU's Administrative Council consists of 41 delegates of member states. Its duties are management of current activity of the organization and controlling communication between the Congresses. The Council passes the budget of the Congress every two years.

The Mailing Operational Council is responsible for economic and current operational affairs. It modernizes old products and promotes novelties on the market.

The International Office provides logistic and technical support to other bodies. It employs about 150 people coming from over 40 member states.

The Consultation Committee is the youngest body of the UPU. Its task is to do research connected with the access to the mailing services market as well as products and mailing networks. It closely cooperates with the International Office, especially within conducting forums to discussions. The body also receives opinions private mailing operators concerning improvement of the mailing services market.

While discussing the issues concerning the UPU, POST-EXPO should be also mentioned, namely an annual international exhibition and mailing conference, the most prestigious event in the mailing sector in the world. During the conferences, there are the latest solution for the mailing services market ad telecommunication presented. There are also products of head brands of the tele-technology and IT sectors exhibited.

### 3. The convergence of prices for the mailing services in the European Union

High quality of services and sector stability are the two basic priorities of the EU's mailing policy. Increasing effectiveness and quality of the sector functioning was supposed to provide implementation of competition into the market. The final aim of the mailing policy was and still is however opening the market. While analyzing the last 15 years, the monopolies on the mailing services market were significantly limited. Contemporary mailing operators were provided conditions to adapt to the new reality. There is the SWOT analysis for Poczta Polska S.A as below.

**Table 5.** The SWOT analysis for the Poczta Polska

Strong points	Weak points
<ul style="list-style-type: none"> <li>• large entity,</li> <li>• privileges from the state ownership,</li> <li>• the position of a monopolist in a restricted area,</li> <li>• more favorable price for restricted services comparing to the EU's prices,</li> <li>• wide selection of services,</li> <li>• huge network of distribution (large number of post offices),</li> <li>• entering new sales markets (banking, insurance, advertising services),</li> <li>• large HR and substantial potential,</li> <li>• cooperation with post offices in Europe and other countries throughout the world,</li> <li>• a significant position in the Central East Europe</li> <li>• market actions aiming at increasing competitiveness, e.g. categorization of dispatch.</li> </ul>	<ul style="list-style-type: none"> <li>• styles of management dependent on a political situation,</li> <li>• out-of-date organizational structure,</li> <li>• under-investment,</li> <li>• low level of the mailing services computerization,</li> <li>• low level of automatization (sorting),</li> <li>• unsatisfying level of transport network development,</li> <li>• poor financial condition,</li> <li>• noticeable bureaucracy,</li> <li>• low expenditures on research and development,</li> <li>• loss of significant part of the messenger's service market.</li> </ul>
Opportunities	Threats
<ul style="list-style-type: none"> <li>• large market,</li> <li>• poor knowledge of competitive companies among customers,</li> <li>• use of regulative solutions used in the EU's countries,</li> <li>• postponing the date of full opening of the mailing market (the protection period after Poland's joining the EU),</li> <li>• possibility to receive the EU's funds,</li> <li>• possibility to further entering of the Polish operator onto the European markets.</li> </ul>	<ul style="list-style-type: none"> <li>• low pace of economic development in recent years which contributes to the decrease of demand for mailing services (both from individual customers and institutions),</li> <li>• legislation not adjusted to the requirements of the mailing services market in the EU,</li> <li>• lack of developments strategy of the mailing services market,</li> <li>• entering the European operators onto the Polish market and in the result, growing competition.</li> </ul>

**Source:** own work based on the strategy of Poczta Polska and Panasiuk A., Problemy dostosowania rynku usług pocztowych w Polsce do wymagań Unii Europejskiej/The problems of adjusting the mailing services market in Poland to the EU's requirements, „Technika i eksploatacja poczty"/The technique and exploitation of post 2002, No 1-2, p. 5.

As the above SWOT analysis shows, the Polish operator has numerous weak points. If Poczta Polska wants to become an recognized partner for economically strong and modern European posts, it must undertake actions aiming at elimination of those weaknesses. It is important that it has time to do it since there will be no full opening of the mailing market for competition. There are more opportunities however taking into account the size of the threat, the situation seems to be serious. There is a real concern that if Poczta Polska has not used the transformation period properly (for restructuring or computerization) the Polish mailing market will be dominated by the EU' operators.

Full opening of the mailing services market will mean adjusting services to customers' needs both as regards quality and price. Price stability will be particularly important for the entities which rarely use mailing services as well as for customers. The solution meeting expectations of the sides may be price policy namely establishing price limits.

Market forces strongly interact with the mailing services price policy. Thanks to the market power, a monopolist reaches profits thanks to limiting production to the lower level than that in the conditions of perfect competition and increasing prices above the final cost, namely the level after which it would continue sales in the competitive conditions. Detailed measurement of a market power is based on the Lerner's index, namely the difference between a price and final cost in which a monopolist maximizes profit. The higher value the Lerner's index reaches, the more market power an entrepreneur possesses with maintaining prices significantly above the final cost. However, a practical use of the Lerner's index in the anti-monopoly proceedings is very limited. Courts and competition protection institutions usually do not have clear bookkeeping data according to which they would precisely determine a final cost. Thus, the American and EU's jurisdiction uses the similar measurement of the market power, namely estimating an entrepreneur's share in a proper market. A market power is not the matter of size or turnover reached by an entrepreneur but the matter of relation of its economic potential to a market size which it acts on. A proper market makes the part of trade turnover where competitive conditions are unanimous for goods or services suppliers of the same category. Defining a proper market means determining real competitors of a given

entrepreneur who make a competitive pressure on it and whose actions it must recon with. The notion of a proper market differs from an economic comprehension of the market as an area where the forces of demand and supply for a given group of goods meet. Defining a proper market means determining production, geographical and sometimes time borders within which an entity is subject to pressure from competition (Targański 2010, p. 118).

Market forces will be more and more contributing to the more effective providing common services and limiting the cost of residual part which is not directly economically interesting. Nevertheless, in future a common service may not be remained only the hands of a market power. It will be necessary to provide certain trade freedom to the operators providing a common service (especially abolishing the requirement of unanimous mass mailing price) as well as it will be necessary to finance *ad hoc* as long as it is reasonable and proportional. Moreover, there may be also regulative measure implemented especially to the market with small number of dispatch per capita.

The national regulator may control the range and pace of all potential price growths and maintain prices on a reasonable and justified level (through proper price limits). Establishing a maximum price may play a significant role in that matter.

The maximum price of goods is the one which may not be extended. On the one hand in such cases there is also limiting competition, is the limiting is equal to limiting a decision freedom of parties within price establishing. According to the Commission such price imposing in some cases may lead to threatening of proper competition functioning. On the other hand, such agreements are favorable for consumers (purchasers of goods) since they lead to maintain low prices of goods or even to their lowering. They also force entrepreneurs (distributors) to raise activity effectiveness by lowering costs their profit growth is not possible by increasing goods re-selling prices due to the existence of maximum prices. In the result, the existence of such agreements may eliminate ineffective distributors from the market. Those agreements do not exclude price competition between distributors who may freely shape prices provided that they do not extend the maximum price. Vertical agreements agreeing maximum prices

bring economy and consumers much more benefits than negative phenomena. According to the Polish anti-monopoly law, the legality of vertical agreements agreeing maximum prices mostly depends on the size of the share in the market proper to a supplier. Principally, if the share does not extend 30% (together with the share of a capital group which a supplier belongs to) then the agreement is allowed (Kohutek i Sieradzka 2008, p. 268 and next).

Despite implementation of regulative measures, the European Commission expects that in many countries it will not be possible to fully eliminate a state assistance for the mailing services sector. Still, many countries may need such aid as sector fees or compensation fund. Also public orders or imposing the obligation to provide a common service to remaining operators will not be eliminated. The matter of the Economic and Monetary Union is also of great importance for the mailing services market. The Economic and Monetary Union is a unanimous financial market where there is a free flow of capital between the member states. It means that a country of a high deficit of the governmental and self-governmental institutions sector may reach for savings occurring in other Euro zone states. It simultaneously contributes to the growth of long-term percentage rates throughout the Economic and Monetary Union and “pushing out” the demand to the funds announced by the private sector (Panfil 2011, p. 117).

Implementation of a unanimous Euro currency brings many benefits. Real benefits for consumers resulting from the integration of the retail market of financial services makes first of all the access to wider selection of services with a lower cost. It is possible thanks to the growth of competition between service providers and effects of the scale reached by over-national enterprises and institutions. Acceleration of integration and reaching the mentioned benefits by consumers demands however many more actions mainly of a regulative character.

Particularly issues of information asymmetry between the market participants, unification of fees for trans-border transfer (within a unanimous price area) require solving. The most important condition of retail integration of services is considered consumers' safety during realization of trans-border financial transactions. Consumers will not want to use services abroad without providing them the same protection as in a na-

tive country. Poland's joining the monetary union caused overwhelming it in full positive effects resulting from the participation in a unanimous financial market. Adopting a common currency provides national entrepreneurs the access to foreign sources of financing with more favorable conditions. The effect of Poland's joining the Euro zone will be elimination of transaction costs and the exchange rate risk which automatically leads to the decrease of national interest rates and the amount of benefits for exchange rate risk. As a result it will stimulate the inflow of long-term foreign capital. The growth investment pace is estimated to increase by 0.5-1.0% and the GNP pace by 0.2-0.4% per year. According to the presumed data micro-economic benefits from the European integration for the Polish banking sector will be connected with the growth of competition on the financial market which may cause lowering interest rates and more availability to investment loans.

The estimated benefits connected with a unanimous EU's financial market may differ from the results of empiric research therefore they are considered much optimistic. Despite difficulties in qualifying and lack of details of the estimated prognosis, there is no use doubting that integration of the financial market may bring more effectiveness and significant widening of the range and availability of financial services. A well-developed financial market favors to faster economic growth and financial stability. Generally, in the scale of the whole European Union, a unanimous financial market improves the capital allocation mechanism and allows reaching particular benefits both for entrepreneurs and consumers.

It should be highlighted that the integration of the EU's financial market means not only economic benefits but also regulative development, dissemination of standards of providing services where the economic analysis should be of *ex ante* character. A unanimous financial market means providing financial stability of a common, global good character which proves the necessity to consider its protection within the European network of financial security (Jurkowska-Zeidler 2007, p. 116 and next).

National/indicated mailing operators on the Economic and Monetary Union have large retail networks thus there may be a hypothesis put that there should be the right of one price on a free competition market of mailing services.

The Purchasing Power Parity (PPP) arises from the right to one price assuming that in the condition of a competitive exchange, having deducted the costs of transport and customs, the same products shall be sold in different countries with the same prices if they are calculated into the same currency. The right to one price used not to particular products but to the national level of prices makes a basis to the parity of the purchase power. According to the formulae, prices in different countries are connected by the exchange rate which is adjusted so that it reflects the changes of price levels. An inflation factor expressed in proper formulae like CPI or HICP may be used to calculate the changes in prices and PPP. It means that if the level of the prices in Poland increases by 5% comparing to the prices in the Euro zone, Euro shall increase by 5% as well. The exchange rate change calculated according to PPP may be expressed as a difference in the inflation rates in different countries as well. Due to the relative price changes do not occur fast but they are a long-term phenomenon, the PPP theory explains shaping the exchange rates in long-term periods. The availability of the method has two conditions (Zielińska-Głębocka 2012, p. 166 and next):

- the same basket of goods and services should be considered in different countries thanks to such standardization of price measures as CPI, HICP or price delators;
- factors causing deflections from purchase power parity but interacting exchange rate changes in longer periods are omitted.

Deflection for the PPP means that the prices from the same basket of goods and services are different in different countries, which is often shown as the Big Mac test. The factors causing those deflections in longer periods are (Zielińska-Głębocka 2012, p. 167):

- trade costs such as customs, non-fee barriers, transport costs, imperfections of competition and monopoly practices in the international markets (the currency of the country which imposes barriers onto other countries or uses monopoly practices may be subject of appreciation);
- differences in the costs of maintenance in different countries resulting from various income levels (the currency in a country of higher incomes is subject to appreciation);

- different pace of work and capital productivity growth, total productivity of production factors (the currency is subject to appreciation in the countries where productivity grows faster comparing to other countries);
- different relation of trade and non-trade goods (the currency is subject to appreciation in the countries with high share of non-trade goods);
- different preferences according to national and foreign goods (much tendency of a country to import, growing demand for imported goods cause depreciation but the less final tendency to import growth of demand for export goods causes the currency appreciation).

There may be another hypothesis put that if costs (of transport, customs) and limits and other restrictions are not much, international competition shall make that prices for sending the same dispatch in different countries of the Economic and Monetary Union change in the same direction. Let us consider an example of the letter dispatch above 100g market particularly due to competition and standardization as well as historical data. Due to high standardization of mailing services in the sector, one may expect some effects of that process. There are zones for the mailing services prices analysis throughout the world presented in the picture as below.

**Picture 2.** Price zones for the mailing services throughout the world



**Source:** own work based on [http://www.royalmail.com/sites/default/files/Royal%20Mail\\_InternationalWallChart\\_April2013.pdf](http://www.royalmail.com/sites/default/files/Royal%20Mail_InternationalWallChart_April2013.pdf).

The table below presents prices for letters up to 100g with the division into Europe and the World's Zones No 1 and 2. The prices included in the table are shown in British pounds, those are net prices, without VAT.

**Table 6.** Average prices for letters up to 100 grams with the division onto Europe and the World Zones No 1 and 2 [in British pounds]

Weight up to	Europe		Countries in the World's Zones No 1 and 2	
	Stamps	Franking	Stamps	Franking
10g	£0.88	£0.79	£0.88	£0.79
20g	£0.88	£0.79	£1.28	£1.16
40g	£1.28	£1.14	£1.88	£1.66
60g	£1.68	£1.49	£2.48	£2.21
80g	£2.03	£1.79	£3.08	£2.76
100g	£2.38	£2.09	£3.50	£3.20

**Source:** own work based on [http://www.royalmail.com/sites/default/files/Royal%20Mail\\_InternationalWallChart\\_April2013.pdf](http://www.royalmail.com/sites/default/files/Royal%20Mail_InternationalWallChart_April2013.pdf).

The prices for letters up to 100 g are more expensive in the two world's zones than in Europe by 40.5% on average.

The table below presents the prices for parcels up to 100 g with the division into Europe and the World's Zones No 1 and 2. The prices included in the table are shown in British pounds, those are net prices, without VAT.

**Table 7.** Average prices for parcels up to 100 grams with the division onto Europe and the World Zones No 1 and 2 [in British pounds]

Weight up to	Europe		Countries in the World's Zones No 1 and 2	
	Stamps	Franking	Stamps	Franking
100g	£3.00	£2.70	£3.50	£3.20

**Source:** own work based on [http://www.royalmail.com/sites/default/files/Royal%20Mail\\_InternationalWallChart\\_April2013.pdf](http://www.royalmail.com/sites/default/files/Royal%20Mail_InternationalWallChart_April2013.pdf).

The prices for small parcels up to 100 g are more expensive in the two world's zones than in Europe by 18% on average. The table below presents prices for letters, parcels and other dispatch above 100g with the division into Europe and the World's Zones No 1 and 2. The prices included in the table are shown in British pounds those are net prices, without VAT.

**Table 8.** Average prices for letters, parcels and other messengers over 100 gram with the division onto Europe and the World Zones No 1 and 2 [in British pounds]

Weight up to	Europe		Countries in the World's Zone No 1		Countries in the World's Zone No 2	
	Stamps	Franking	Stamps	Franking	Stamps	Franking
250g	£3.50	£3.15	£4.50	£4.20	£4.70	£4.25
500g	£4.95	£4.45	£7.20	£6.60	£7.55	£6.85
750g	£6.40	£5.75	£9.90	£9.00	£10.40	£9.45
1kg	£7.85	£7.05	£12.60	£11.40	£13.25	£12.05
1.25kg	£9.30	£8.35	£15.30	£13.80	£16.10	£14.65
1.5kg	£10.75	£9.65	£18.00	£16.20	£18.95	£17.25
1.75kg	£12.20	£10.95	£20.70	£18.60	£21.80	£19.85
2kg	£13.65	£12.25	£23.40	£21.00	£24.65	£22.45
Each extra 250g or its part up to 5kg	£1.45	£1.30	£2.70	£2.40	£2.85	£2.60

**Source:** own work based on [http://www.royalmail.com/sites/default/files/Royal%20Mail\\_InternationalWallChart\\_April2013.pdf](http://www.royalmail.com/sites/default/files/Royal%20Mail_InternationalWallChart_April2013.pdf).

Average prices for letters, parcels and other dispatch above 100g are higher in the World's Zone No 1 than in Europe by 61.5%. Simultaneously, average prices for letter, parcels and other dispatch above 100 g in the World's Zone No 2 are higher than in the World's Zone No 1 by 5.5% and by 70% higher than in Europe.

## 4. The role of the member states in the development of the mailing services in the European Union

Member states actively participate in the development of the mailing services market mainly thanks to realizing regulative policy principles. In recent four years a key determinant of the European system evolution was the world's crisis lasting from 2008 which strongly hit in the EU's economies and some of them as the Greek one put on the edge of bankruptcy. It caused extensive states' debt that were saving the financial

system against bankruptcy and stimulated economy through investment programs. As a result, in almost all EU's states there was a little growth of debt comparing to the GNP. The crisis had not only economic repercussions but also it influenced multi-dimensionally rearrangement of power in the European system and changed the vision of the Europe's future. It also highlighted defects of the EU's regulative mechanisms and incapability to amortize crisis which forced heading states for protection actions. The renaissance of the idea of mercantilism strikes first of all to the net importers of foreign investments, namely Poland since it threatens flowing away investments as a result of political pressure by government on corporations (Musiałek 2012, p. 38).

The policy towards the mailing services market is expressed by:

- a. selection of legislative regulations concerning functioning of the market,
- b. determining the range of the restricted mailing services,
- c. appointing control bodies of the restricted area and the quality of services provided by mailing operators,
- d. introducing concessions,
- e. appointing a public mailing operator as a selected economic entity that provides mailing services on the basis of generality ad availability (public usefulness), which means that a public operator has particular entitlements and duties in the mailing services market.

The issues concerning the telecommunication market should be limited in future only to creating common regulative frames of the EU's member states. The cooperation is necessary due to functioning of various systems of administrative laws in every member states.

It is noticeable that an example of the mailing services sector indicates that the administrative law of regulations in the EU is the law established on two levels: community one where the basic acts of regulation are directives and the national one with the use of legal acts implementing common policy. The member states respect those principles and that is why they contribute to the development of the mailing services in their areas.

Within one and the other level, the regulative activity may not stop competition or disturb market on the contrary it should support the com-

petition law protecting the public interest. A particular role in the process was ascribed to the ECO President. The community law does not determine any organizational form or system position of a regulative body thus there are different models of functioning of the institution in particular EU's states. Regulative bodies should be characterized by at least one common feature, namely independence and individuality while performing regulative functions. The community law creates certain standards that are respected in all member states.

Contemporary dissertation concerning the CEO President's duties indicated the need to improve regulative mechanisms. As a supervising institution, and the one promoting competitiveness it should promptly receive information on demand from entrepreneurs acting in the mailing services market.

Another arousing problem is implementation of proper calculation of costs and regulative book keeping, arrangement of fees and retail prices basing on costs of providing particular services as well as the opportunity to choose another proper method to determine fees in each case.

The forms of information activity provided by the CEO President, including pro-consumers' actions should be developed. There are no clear regulations in that matter which disturb an effective protection of users (Monarcha-Matlak 2008, pp. 100-102).

The economic integration in the European countries results in the processes of deregulation of the mailing market, namely lifting legal limits between different segments of the financial market both on the national and international levels and the phenomena of liberalization and widening the range of activity in the mailing services market connected with the process.

The literature highlights that beside the indicated deregulation also such phenomena as internationalization of economic turnover and high level of specialization caused growth of competition in the mailing services markets which caused change of traditional environment of entities functioning. The period preceding the changes was characterized by so called classical segmentation of the market namely division into profiled entities performing the same (traditional) common services. The indicated changes (deregulation) contributed to significant structural transformations in the systems of mailing services of some EU's states and led to transformation of "nation-

al” systems into all-European system of mailing services entities. This caused the necessity to create certain “harmonization minimum” on the ground of the community law regulations in relation to the entities performing mailing services , and the “minimum” would consider, on the one hand, variety of types and traditions of performing activity in particular EU’s states, on the other hand it would provide “minimum” collection of legal requirements that the entities using a unanimous European passport must fulfill for the community mailing services entities (Mikos-Sitek 2009, p. 91).

There are numerous already existing legal regulations lifted in order to perform the postulate of freedom of performing services (Mikos-Sitek 2009, p. 65). However, it does not mean full freedom in each distinguished segment. The mailing services market was and still is subject to regulations protecting consumers. Multiplicity and detail of occurring regulations were caused by political, military and fiscal issues. Thus changes liberalizing the EU’s mailing services market are of particular significance for the activity of the member states mailing operators and their customers (Czaplewski and Panasiuk 1999, p. 1; Gospodarek 2003, pp. 95-101.).

## **5. Financing and accounting aspects of the activity of the public mailing operators in the EU’s countries**

Accountancy is a specific record system whose basic aim is measurement and valuation of an economic activity unit. The subject of accountancy is measurement, register and presentation of such economic events occurring in the unit which may be presented in a monetary expression. All economic processes occurring in entities are called economic events (Czaplewski and Panasiuk 1999, No 1-2, p. 19).

The systems of economic entities (households, profit making and non-profit making entities) are connected by flow of goods, money and information which leads to occurring economic events mostly included in book keeping. The entities of those systems submit informa-

tion needs that are satisfied by accountancy. In Poland, the subject range indicated in the Act from 29<sup>th</sup> September 1994 on accountancy (Journal of Laws 1994 No 121 pos. 591 with later amendments) has been overwhelming all economic entities (profit making and non-profit making excluding the National Bank of Poland and the Polish Treasury located (their seat or management) in the territory of the Republic of Poland.

The subject range was determined in the Decree of the Minister of Finances from 15<sup>th</sup> January 1991 on the principles of book keeping (Journal of Laws from 1991 No 10, pos. 35) whose range was narrowed to the book keeping record. The accountancy act widens the subject range by the description of the used principles and requirements to be respected. The supreme principles are as follow (Cebrowska 2006, p. 120):

- the principle of memorial,
- the principle of continuity,
- the principle of caution,
- the principle of commensurability of costs and incomes,
- the principle of truthful image,
- the principle of subjectivity.

Member states are obliged to implement legal regulations into the national law for the current operators providing a common service binding them to keep separate books in their internal accountancy systems in such a way that clearly differs each service and product included in the range of a common service separately from the services excluded from the common service.

The obligation of the accountancy separation facilitates net costs calculations of a common service. If a member state does not use any mechanism of a common service performance financing and if a national regulative body is convinced that no indicated operator performing a common service in a member state receive some aid from the state in a hidden form or any other one and competition in the market is fully real, the national regulative body may decide on not using the requirements of accountancy separation.

The cause of international mobility of entities acting in a common market of mailing services was first of all removing barriers for international capital flow beginning from the legal and administrative limits by approaching the binding legal regulations concerning fiancé markets and investments

as well as standards of accountancy finishing on the access to information on opportunities to invest in other countries and practical possibility to perform such an investment for costs similar to investments in a national market. Establishing a commonly recognized system of accountancy and financial report of high standards providing transparency of finances of companies and transparency of information for shareholders, it realized that it is incredibly significant for further advances in the process of common financial market integration.

Due to those reasons, the Council adopted a regulation in June 2002 implementing International Accountancy Standards. Integration of entities' activity occurs within a wider process of restructuring, searching for opportunities to reduce costs and aiming at improvement of competitiveness and access to wider customers' database. The process of the mailing services market is also an effect to develop an area of financial services specializing in complex corporate finance linking credit services and servicing current corporate financial needs (Góral 2011, p. 56 and next).

Conducting and maintaining the balance allows systems developing. Surviving and maintaining on the market is an important aim of each company thus management develops the system of controlling and conducting a company's activity. The subjects of conducting are economic and technical measures aiming at maintaining accordance of current values with the norm indicating the state of balance. While conducting economic measures, a system of accountancy plays a significant role providing identification, measuring and comparison of measures with the norm determined by a plan. Accountancy provides feedback. An area of accountancy aiming at maintaining an internal accountancy in a company is called a managerial accountancy.

Any financial and accountancy aspects of public mailing operators' activity in the EU's states are brought to a common denominator which is economic effectiveness of a performed activity. Economic effectiveness of a company may be mentioned in the context of measuring effectiveness and objectiveness of a performed economic activity by it. In that way, economic actions undertaken by a company's management may be evaluated.

Economic effectiveness is a relation of reached effects to the circulation of factors used to their acquiring. Low economic effectiveness leads to price growth and increasing needs for power, materials and production

space without production result growth. High economic effectiveness creates opportunities to lower costs of manufacturing, it increases production results and profit which enables investments or growth of individual remuneration (Dziworska 2000, p. 48).

Mailing operators still perform activity in many countries on the basis of budget units' organization. Low economic effectiveness of public operators results mainly from people's attitude, for which private interests are not cohesive with building a company's position in the market. They are not responsible for the effects of the performed activity by a unit and economic situation of a unit does not influence financial situation of those employed since a unit does not need to generate income in order to maintain own position in the market. There is still lack of well skilled staff in budget units that would have knowledge on an entity functioning in the conditions of a market competition and an absence of the mentioned staff usually results from the lack of the need to create such posts with preserving a budget unit form. In case of budget units there may be also a primacy of politics over economy important. The influence of a ruling political party may be also expressed in maintaining inefficient staff in order to preserve influences or maintaining balance of various political forces.

However, it is difficult to speak about economic effectiveness in a budget unit if, while performing economic activity in that form, there are so huge limits of a financial type as the ones mentioned below. Any expenditures of a budget unit are performed basing on an expenditure plan approved by a budget resolution where each position makes an impassable limit. The budget limit shapes economic opportunities of a company and directly influences the level of economic effectiveness of an activity. The size of a budget limit is of great importance for proper functioning of an entity managed through using a budget system. A company using a budget system must perform its assumptions in full in order to use expected organizational and financial benefits (Jerzemowska 2006, s. 51).

The budget top-down established including limits for particular expenditures must be realized by a unit in full in impassable amounts. However, limiting expenditures means using restrictions and budget cuts. Low budget limit often does not allow employing skilled manager's staff that would improve a budget unit's work.

A budget unit is characterized by low flexibility of finances economy. The problem concerns not only funds but also time limit due to its use. Principal source of incomes are funds coming from taxes. A basic barrier here is determining opportunities to burden a society itself. It all comes to a state, its role and function. The analogy of the situation occurs also as regards expenditures, mainly due to the limits and the way of their destination according to a budget classification. Any outflows from the budget should result from a financial system (Borodo 2008, p. 36). A basic aim of a unit within financial economy is proceedings and expenditures of funds according to the approved budget. The act precludes a unit using other sources of financing available in a commercial market.

According to the Polish law, a budget unit has exactly a year for budget funds expenditures (within a given budget year). Surely, it does not favor for reasonable using it. Funds dispatchers try to spend all possible funds in a given year being afraid of limiting the granted funds in the next budget year. Transferring expenditures or their part onto the following year would favor their more reasonable expenditures. Decisions connected with expenditures of funds would be more sensible and pursuant to real needs of a unit. Impulsive proceedings in that case do not lead to generating a budget unit income as an economic entity (Malinowska-Misiąg and Misiąg 2007, p. 42).

Granting funds to budget units and decisions undertaken in that matter are not correlative with the whole mechanism of interaction onto costs. In practice, it means that if a budget unit saves funds thanks to reasonable cost economy it will not work out any profit thanks to it since any worked out surplus of a unit must be pursuant to the act transferred to the budget of a state or proper local self-government. A similar disadvantage is included in the mechanism of budget funds allocation. It does not describe quantity or quality variety of the work of those employed in the public sector but it contains a schedule of remuneration including the minimum and maximum limit for particular posts. It is a budget economy specification where remuneration is received the post not quality or efficiency of the performed work.

Although a financial economy of budget units is transparent, limiting grants from a state budget for budget units activity and a relative growth of payments of financial surplus into the budget are presumed. Most cur-

rent budget units are ineffective and unnecessary. Substituting those units by other forms may lead to lowering of costs for public administration activity service also due to wider opportunities provided by the Commercial Companies Code. However there are also some limits. Certain tasks performed by budget units may not be transferred to external units due to their relation to public authorities thus it is necessary for them to be taken over by vernacular units. It will result in the necessity to increase employment in vernacular units and the growth of costs of their activity (Owsiak 2008, p. 67).

While analyzing economic effectiveness of a budget unit, financial effectiveness of a budget unit should be taken into account because quantity effectiveness is closely related to funds expenditures and relatively simple in calculations into monetary values. The quality effectiveness should be also omitted since it is difficult to value quality effects. Budget units act on the basis of approved technical documents (as in case of services with proceedings procedures) and they aim at performing a production plan with the use of certain funds (Dziworska 2000, p. 81). A budget system should successively influence the improvement of budget unit activity effectiveness.

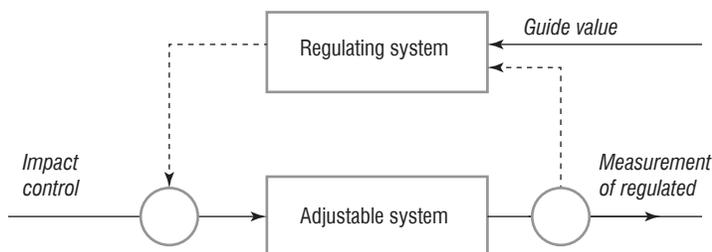
Budget units aiming at reaching a maximum economic effectiveness should actively use information coming from a budget system modifying values in budget plans, namely use a constant budget method. The main assumption of the model is optimization of planned activity results according to their opportunities. Funds should be granted on the level of real minimum for full realization of a planned task which is agreed as the amount of funds necessary to perform assumed amounts that are planned according to the costs of contemporary actions corrected by the change of amount the planned result by a value of external and motivation factors (Kosikowski and Ruśkowski 2006, p. 56).

The described financial model also includes simplifications concerning uniformity of funds expenditures and performance of production tasks in a planned period in a unit (Trzecieliński and others, 2002, p. 13). It is assumed that the level of effectiveness of a given center in a planned period unit is constant. While analyzing correctness of a model it should be remembered about a component element of a budget limit, i.e. funds destined to motivation bonuses for employees.

In case of private entities performing mailing services, effectiveness, profitability and competitiveness are included in the group of the most desirable features of a company's activity. The influence on shaping those opportunities is of widely comprehended flow of entities in a chain of relations between a dispatch sender, service performer and addressee. In order to understand a matter of controlling, the definition of those actions should be learnt and procedures of implementing controlling principles in a company should be ordered. The task of controlling is to support managerial actions within a company's management. Logistic processes in a company performing mailing services are characterized by complexity. Thus, there appears more and more need within decision and action coordination and reaching additional devices and information concerning environment in which the entity acts. Such actions require professional knowledge and professional service. Thus there is a controlling concept implemented more and more often in the companies providing messenger and mailing services, both in a strategic and operational dimensions.

Accountancy participation in the processes of a company's economics controlling may be explained while considering the issue from the point of view of regulation of economic values, solving decision problems in a company and an entity as an autonomic system. The structure of regulation circuit was presented in the picture below.

**Picture 3.** The structure of regulation circuit



Source: own work based on Dobija M., *Rachunkowość zarządcza i controlling/Management accountancy and controlling*, PWN, Warszawa 2007, p. 49

From the first point of view, the role of accountancy in creation of a circuit regulating a given economic value is determined, namely the review of elements included in the circuit. The scheme of economic value regulation includes the elements realizing: current measurement of economic value, measurement of normative value (standard), operations performed in a regulating system and modifying operations (controlling), those influencing current values (Dobija 2007, p. 55). In the second point of view, there is accountancy participation in solving decision problems especially those of economic character. From the third point of view, the role of accountancy in maintaining a company in a state of economic balance expressed, namely in the processes of economic homeostasis, allowing existing in a free, competitive market of products and services (Dobija 2007, p. 55).

Managerial and controlling accountancy are the developing systems of knowledge. New ideas of accountancy, calculation of costs and results may significantly improve managerial accountancy systems and controlling effectiveness, their importance for a company's management that performs mailing services and others. Three dimensional accountancy is a system of knowledge where pace of a company's activity is examined, measuring its impulse, namely value determining a company's ability to create profit. Impulse changes are aroused by economic forces that may be measured in the system of three-dimensional accountancy. The values of impulses caused by economic forces activity influence the increase of profit. Accountancy and controlling make strategic management elements. Another, not traditional attitude to costs and prices is needed in a strategic management. Identification, analysis and calculation of costs throughout the whole period of a product life which is a performed mailing service make one of important elements of managerial accountancy concept participation in supporting a strategic management. Another significant element supporting strategic management concerns more general attitude to evaluation of mailing services while considering costs. The balance of costs of the whole period of a product life leads to determination of a price considering costs of each period of designing, producing and selling a service (Comp. Jarugowa and Skowroński 1986, p. 66).



CHAPTER 6

# **Contemporary changes on the mailing service market**

# 1. The changes concerning territorial availability to mailing services in the EU's countries

The range of territorial availability to the mailing services in the EU's states is performed via cohesion policy. The foundation of intervention within cohesion policy should be the level of development and the condition of the UE's territorial diversities and the measure of its effectiveness should be removing differences (their growth namely convergence or divergence should be the measure of ineffectiveness). The varieties may be measured on different levels: national or local ones however, as practice shows, the change direction may be different on each level. The measurement is performed routinely with consideration of three aspects: economic, social and territorial ones.

As regards social cohesion, the measurement is performed by unemployment rate examining and, recently by employment rate examination. The biggest problem so far is connected with the measurement of territorial cohesion: there are different indicators used (communication availability, access to public services, examining relations between functional areas, e.g. center-suburbs, cities-villages and recently metropolis areas-others).

The main dimensions concerning the diversity state in the EU indicated by the following axis (Goryńska 2008, p. 45):

- a. the European economic core – suburban areas,
- b. the metropolis areas – other areas.

A significant feature of present diversities is that they decrease quickly within technical infrastructure equipment (especially local in some comparisons (on a national level) also as regards income. However, there is high diversity within innovativeness and IT society development which is considered the motor of development, not everywhere, as it is visible in practice (Goryńska 2008, p. 45).

The European territorial cooperation is supposed to play a significant role in providing a balanced and constant development in the EU's territory however, strategies guidelines direct intervention into common strategies of development of proper areas on a national, regional and local levels, particularly to create networks in order to provide transferring concepts

and include national and regional cohesive programs into the main policy stream. The European territorial cooperation within the access to mailing services is supposed to overwhelm regions located near land or sea borders, areas of transnational cooperation determined in relation to actions supporting the integrated territorial development, international cooperation and experience exchange.

Strategic guidelines highlight that good management on all levels is necessary to effective realization of the cohesion policy which requires widely determined partnership while working out and implementing development strategies necessary to provide effective management to complex strategies as well as improving the quality and effectiveness of a public sector.

According to the integrated guidelines for the growth and employment within mailing services, the programs that received support within the cohesive policy should aim at concentration of resources in the following three priorities:

1. increasing attraction of the member states, regions and cities by availability improvement, providing proper service quality and level,
2. supporting innovativeness, entrepreneurship and development of the economy based on knowledge by using opportunities within research and innovations including new information and communication technologies,
3. creating better and more work places by interest of more people in employment and economic activity, increasing employees and enterprises' adaptation abilities and increasing investment into human capital.

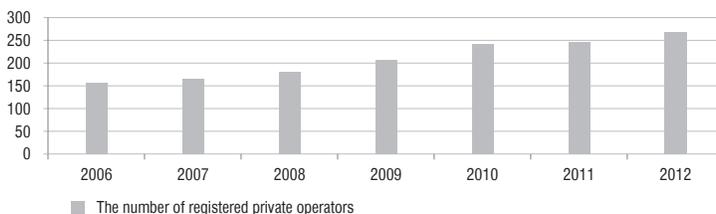
Strategic guidelines make indicative frames thanks to which member states and regions are supposed to work out national and regional programs considering the contribution into the EU's aims realization concerning cohesion, growth and employment in the mailing services sector (Noworól 2007, p. 64 and next).

Table No 9 and Diagram No 5 below present the number of registered private operators in the years 2006-2012.

**Table 9.** The number of the registered non-public operators in the years 2006-2012

Details	2006	2007	2008	2009	2010	2011	2012
The number of registered private operators	157	164	182	209	244	247	267
Details/ Changes pace	2007	2008	2009	2010	2011	2012	Change 2012/2006
The number of registered private operators	1.4	1.11	1.15	1.17	1.01	1.8	1.70

**Source:** own work based on Baranowska-Skimina A., Rynek usług pocztowych 2011/The mailing services market 2011, the text available online: <http://www.egospodarka.pl/82561,Rynek-uslug-pocztowych-2011,2,39,1.html> (19.10.2013) and The report of the mailing services market condition for the year 2012, The Electronic Communication Office [http://www.ECO.gov.pl/files/?id\\_plik=13127](http://www.ECO.gov.pl/files/?id_plik=13127) (19.10.2013)

**Diagram 5.** The number of the registered non-public operators in the years 2006-2012

**Source:** own work

Each year, from 2006 to 2012 the number of registered private operators was still growing. It may be hypothetically assumed that territorial availability of the mailing services in Poland is still growing. Poland is an example of the EU's member state where opening mailing services into private operators contributed to improvement of the situation on the market and consumers may freely choose a mailing services operator.

In 2007 the number of registered private operators increased by 4% comparing to the data from the previous year. In 2008 there was growth of the number of private operators by another 11% up to 182. In 2009 the number of registered private operators grew by 15% and in 2010 by 17%. In 2011 there was fall of growth pace to the level of 1% comparing to the analogy earlier period. In 2012 the number of registered private operators grew by another 8%. In the years 2006-2012 the number of registered private operators increased by 70%.

A significant determinant of territorial availability to mailing services is a territorial structure of the mailing operators' administration. The administration territorial structure should be shaped in such a way that decisive centers were close to the phenomena that are subject to regulation. Decentralization is favorable since unlikely to huge space administration structures it provides direct and close view on social relations that are subject to administrative regulation. The transparency of relations for administration causes it may quickly respond changes occurring there. But there are no absolute criteria in that matter because the problem of transparency also depends on the kind of administrative tasks. At present, modern methods of administration allow preserving the principle of transparency also in case of bigger units of territorial division.

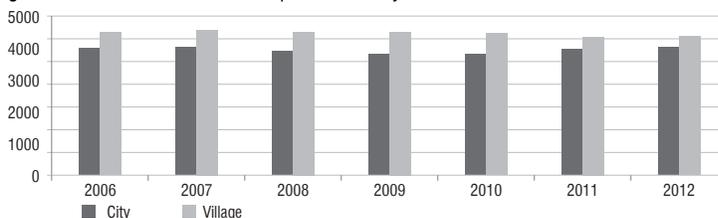
Large number of post offices decides on territorial availability to mailing services. Table No 10 and Diagram No 6 below present the number of Poczta Polska post offices in the years 2006-2012.

**Table 10.** The number of Poczta Polska premises in the years 2006-2012

Details	2006	2007	2008	2009	2010	2011	2012
City	4037	4068	3947	3842	3855	4004	4060
Country	4516	4624	4542	4536	4510	4379	4399
Details / Changes pace	2007	2008	2009	2010	2011	2012	Change 2012/2006
City	1.01	0.97	0.97	1.00	1.04	1.01	1.01
Country	1.02	0.98	1.00	0.99	0.97	1.00	0.97

**Source:** own work based on Baranowska-Skimina A., Rynek usług pocztowych 2011/The mailing services market 2011, the text available online: <http://www.egospodarka.pl/82561,Rynek-uslug-pocztowych-2011,2,39,1.html> (19.10.2013) and the Report on the condition of the mailing services market for the year 2012, The Electronic Communication Office, [http://www.ECO.gov.pl/files/?id\\_plik=13127](http://www.ECO.gov.pl/files/?id_plik=13127) (19.10.2013)

**Diagram 6.** The number of Poczta Polska premises in the years 2006-2012



**Source:** own work

In cities, in 2007 the number of Poczta Polska post offices increased by 1% comparing to the year 2006. The next two years, i.e. 2008-2009 brought stagnation in the Poczta Polska situation. In that period, the number of post offices decreased by 3% in 2008 and another 3% in 2009. In 2010 the number of Poczta Polska post offices maintained on the level similar to that one from 2009. In 2011 new offices opened and their number grew by 4% and in 2012 by another 1%. While analyzing the changes on the number of Poczta Polska post offices in cities in the years 2006-2012 there was growth of the number of offices by 1% comparing to the number of Poczta Polska post offices from 2006.

In case of Poczta Polska offices in the country in the years 2006-2012, the pace of changes decreases. Although in 2007 there was growth of the number of Poczta Polska offices in the country by 2% comparing to the year 2006 but from 2008 Poczta Polska began systematically decreasing the number of offices in the Polish country. In 2008 there was fall by 2%. In 2009 there was a slight fall, 6 Poczta Polska offices closed down. In 2010 the number decreased by 1% and in 2011 there was a fall by another 3%. In 2012 there was a slight growth of Poczta Polska post offices in the country by 20 offices in the scale of the whole country. While analyzing the changes in the number of Poczta Polska post offices in the Polish country in the years 2006-2012 there was fall of the number of offices by 3% comparing to the number of Poczta Polska post offices from 2006.

A significant feature of the territorial division structure is availability. It means that a citizen should have a relatively easy access to mailing services. In the past, when there were no communication techniques developed, direct communication (oral) was of basic importance. Also nowadays in the administrative actions where direct communication between authorities and a citizen is necessary, there should not occur much trouble. In the past, there were different principles adopted. In past France, a municipal area should be so big that a church bell should be heard in its borderline or each municipality habitant could walk across it throughout one day. Analogous principles may be transferred into present times and assume that a habitant should reach a poviat capital city within half a day by public transport. Also a poviat clerk should be able to reach each town in proper time. Such an attitude should be a key to establish the princi-

ples of territorial availability to mailing services and location arrangement of post offices, especially institutions providing common services.

Simultaneously, it should be clearly highlighted that the mentioned problems lost their importance due to technology advance (individual car transport, developed road net, telecommunication, etc.). Those factors should have a significant impact on location of post offices in a given territory (Knosala 2010, p. 97).

Poland may boast itself about the most modern post office in the whole Europe. In March 2013 a new office opened in Warsaw where it is possible to send not only an economic but also registered dispatch 24/7 by oneself. The whole customer service procedure is not complicated and it is fully automatized. A machine leads a customer although it takes some time: first weighing, comparing to a dimension table, cost estimation and its acceptance or not, payment, change, waiting for printing a stick connecting a stamp and an address, identification of a dispatch type, sticking, another placing into a collect box. An important advance of such a service is its realization 24/7. There is also an opportunity to collect a dispatch 24/7. However, collecting a dispatch must be preceded by concluding a proper agreement with Poczta Polska. While concluding such an agreement, a consumer given own phone number where an operator send a message with a code opening a mailbox. The boxes are not large so the parcels kept there may not have big size.

An important facilitation in a customer service in the most modern Poczta Polska post office is also opening a separate place for companies' service. It is a problem still not solved in many offices. Companies, due to their large number of sending dispatches and service in individual customers' windows, block service and make consumers wait long time for their service realization (Kłodecka, [http://metromsn.gazeta.pl/Portfel/1,126512,13514600,Poczta\\_Polska\\_najnowoczesniejsza\\_w\\_Europie\\_.html](http://metromsn.gazeta.pl/Portfel/1,126512,13514600,Poczta_Polska_najnowoczesniejsza_w_Europie_.html); 20.10.2013).

In case of mailing services, especially private operators, some of them perform their services with the use of the latest technology providing global availability. It is necessary to fulfill additional factors for a global character of mailing services, beside a website availability with the opportunity to place orders, such as: using an offer in several languages, possibility

to perform an order in many countries, etc. (Kondrat 2008, p. 236 and next). Therefore, a territorial availability to mailing services is mostly determined by marketing and PR of a company providing such services.

## **2. The regulation aspects of shaping fees for common services**

The fees for common services are included in the economic law realization. The economic law is considered one of the basic branches in the law system. The view that the economic law makes an independent law branch is not common the law concentrates norms belonging to different law branches: civil, administrative, financial, thus the outlook has no basis to select that branch. The economic law is a branch overwhelming provisions regulating systems of economic entities, i.e. entrepreneurs including states entities, commercial companies and those regulating economic relations between entrepreneurs, especially the relations resulting from concluded agreements or shaping prices for common services. The economic law also include provisions regulating organization and activity of stocks as well as those determining the notion and types of securities and their turnover. A characteristic feature of the relations regulated by the economic law norms is their professional character. Wide range, huge diversity and variety of economic relations cause that there is lack of general codification of that law branch. Therefore, the sources of the economic law are spread and occur in other law branches.

The specific of considering the aim of the European economic law in the context of mailing services comes down to the interpretation of the EU's law in confrontation with the EU's member states' law. The European Court of Justice determined borders of pro-community interpretation in its jurisdiction deciding that the pro-community interpretation is a creative device whose unconditioned use may lead to create legislative interpretation; using pro-community interpretation may not lead to: substituting

national norms by the community norms by a national institution, granting a national norm a sound contrary to its unanimous content or change the comprehension of a unanimous regulation not arousing any interpretation doubts on the level of national interpretation (Lipniewicz 2010, p. 67).

The aim and range of the economic law mainly focus on realization of free performance of mailing services within the European Union. Principal elements of a common market are community freedoms based on the provisions of the Treaty on the Functioning of the European Union (TFEU). The classical freedoms concerning the mailing services market include (according to the treaty estimation): the freedom to perform mailing services, the freedom to employees and persons' transfer, the freedom of entrepreneurship and the freedom of capital and payment flow.

The principle of free performance of mailing services means that a service provider coming from any EU's member state may freely (without any administrative, legal, technical or fiscal disturbances) transfer throughout the EU's (customs) territory (Barcz 2011, p. I-1).

The amended provisions provide an indicated operator much more flexible principles of shaping fees for common services. According to the new law, the chairperson of the Electronic Communication Office shall determine maximum annual levels of fees for three year periods. The ECO chairperson shall take into account costs of common services, their price availability and market and economic conditions. Moreover, collecting mail transfers overwhelming social security benefits (pensions) or mail transfers in rural areas shall exclusively belong to the competences of an operator indicated by the ECO chairperson. Such proceedings and indicating an operator aims at choosing the best guarantor to perform state tasks within delivering benefits granted to citizens and reaching the poorly urbanized areas.

In a time perspective also determining the subject range of common services and the way of their performance shall be amended. The range of those services shall be finally limited.

The mailing offer shall exclude advertising and mass dispatches. A mailing company shall not be obliged to deliver poste restante, namely a dispatch or money transfer into a particular post office indicated by a sender. Poste restante dispatches are not delivered by a mailman but an addressee collects them personally (Stefaniak-Piasek 2005, p. 55).

Such services shall be performed on commercial principles. Moreover, a common services basket also excludes money transfers that are services of mixed (mailing and financial) character. Fees for common services are mostly depended on a tax payer's status providing mailing services. Due to the fact that a payer's notion is determined by the notion of economic activity, not every public authority institution may have a status of a tax payer. It concerns only those institutions that due to wide spectrum of undertaken actions perform those that depend on the range of public use or actions determined as commercial ones. In relation to the other category of actions it should be highlighted that they are in most cases a secondary activity undertaken by public authority institutions since they are not appointed in order to perform economic activity being a competition for actions performed by private entities.

A general idea of a community law says that public authority institutions do not possess a status of a value added tax payer while undertaking actions or performing transactions. In result, performed actions by them remain beyond the range of VAT. The principle may include also those actions that, according to the provisions of directive 2006/112/WE, are treated as tax free. The EU's legislator granted the member states the right to accept the mentioned activities in the provisions exhaustively appointed in art. 13 par. 2 of directive 2006/112/WE for the activity that the entities perform as public authority institutions. It concerns such actions as mailing services (Feldo 2011, p. 87).

The matter of using an optimal method of financing the net cost resulting from an obligation to perform common services remains problematic imposed onto an indicated operator. A solution concerning the net cost financing was adopted that is defrayed by:

- a. mailing operators' supplements providing common services or those included in common range from their incomes of those services extending 1 million zlotys in a yearly turnover scale.

It is important for the amount of an operator's share while financing the net cost not extend 2% of the income. Moreover, incomes being the basis of a share calculation were calculated within a capital group which an operator belongs to,

- b. a state budget as a supplementation in a situation when the sum of shares in the supplement is not efficient for the net cost financing (on condition there is loss in common services and when the amount of financing does not extend the level of loss). In case of occurring loss, an indicated operator shall be obliged to present a repair activity plan to the ECO chairperson and provide the way of the loss liquidation.

The matter of creating a capital group plays a significant role in the way of financing, according to the above. A characteristic feature of a capital group is occurring two categories of entities: a dominant entrepreneur and dependent entrepreneurs. A capital group consists of:

- an entrepreneur controlling other entrepreneurs and
- all those controlled entrepreneurs.

Those entrepreneurs remain in the relation of dependence on a controlling entrepreneur who, due to its control, has a dominant status. The act from February 16<sup>th</sup>, 2007 on the protection of competition and consumers (Journal of Laws 2007 No 50 pos. 331 with later amendments) does not include the definition of the control itself. It should be adopted however that it is the matter of the control mentioned in art. 4 p. 4 of the mentioned Act, namely opportunity to influence another entrepreneur. Also dependent entrepreneurs may remain in dominant relations towards other entrepreneurs. The same entity, belonging to a given capital group, may be simultaneously a dependent entrepreneur (on one entrepreneur standing on the top of a given group) and a dominant one (towards another participant of a capital group). A capital group may have more complex structure (multi-level) which results from the content of art. 4 p. 14 of the Act on the protection of competition and consumers, saying about a “direct” control (namely that occurring only in “two-level” capital groups) and about a control performed in a direct way (Kohutek and Sieradzka 2008, p. 237).

In case of occurring loss, an operator works out a Plan of repair actions. During the period of realization of the repairing proceedings program by a mailing operator a profit reached by an enterprise is destined firstly to cover loss and next to increase own funds. Financial problems of an entrepreneur justify subjecting it to particular supervision by the ECO chairperson (Ofiarski 2008, p. 311).

Also agreeing the access of mailing operators to the mailing network and elements of mailing infrastructure plays a significant role. An indicated operator shall be obliged to provide entitled operators access to a particular part of its mailing network called the elements of mailing infrastructure. Those are post codes, drop boxes, mail boxes, databases concerning address changes that are owned by an indicated operator.

There are conditions and fees amounts for the access to those elements in the draft of the act. The access regulations and pricelist shall be approved by the ECO chairperson. The access to the remaining part of the mailing network of an indicated operator (distributive and sorting centers, offices) are not regulated by the act which means it may be provided on conditions of a concluded agreement between interested parties on the market conditions.

Poczta Polska S.A. was the mailing services monopolist in Poland until recently. There did not use to be necessary to develop formal or administrative principles to attempt to provide information in order to create mailing infrastructure in the centrally supervised economy not familiar with free competition in the market of branch services. Practice shows that it often occurred on the basis of issuing a proper administrative decision. Today, the law constitutes procedural receiving a permission to perform works. Hypothetically, it may be claimed that free competition in the market and participation in incomes of small entrepreneurs in the mailing services market significantly contributed to it whose offer often face customers' needs and is more interesting than that provided by the contemporary market monopolist.

Providing necessary inter operativeness in the conditions in the condition of a single service provided by several operators (e.g. one of them collects dispatches, another one sorts, transfers and delivers them). The standards concerning mailing infrastructure are very important from a practical point of view, they provide compatibility. The basic aim of compatibility in this case is the opportunity to be connected to information coming from different operators being a main interface between various active operators (*Vademecum teleinformatyka* 2002, p. 330).

### 3. Economic availability of the selected mailing services in the EU's countries

Liberalization of the EU's mailing services market caused that public operators of strong market position also enter foreign markets with their activity. The examples of such actions are public operators in Germany, Austria, Great Britain and Sweden (Wolska 2006, p. 42). Diversification of services on the example of selected public mailing operators is presented in Table No 11.

**Table 11.** Diversification of the services on the example of the selected mailing public operators

The country of a public mailing operator	Parcel and letter services	Logistics	Messenger's services	Direct marketing	Banking services	Insurance services	Internet	E-commerce	Tourist services
Austria	X	X	X	X	X	X	X	X	-
Czech Republic	X	X	X	X	X	-	X	-	X
Spain	X	X	X	X	X	-	X	X	-
Germany	X	X	X	X	X	X	X	X	-
Slovakia	X	-	X	-	-	-	X	-	-
Sweden	X	X	X	X	X	-	X	X	-
Great Britain	X	X	X	X	X	X	X	X	X
Poland	X	-	X	X	X	X	X	-	X

**Notice:** "x" – means providing indicated services, "-" means lack of providing given services

**Source:** own work based on Wolska G., Obszary działania wybranych publicznych operatorów pocztowych w UE – z uwzględnieniem usług logistycznych/The areas of activity of the EU's selected public mailing operators with consideration of logistic services , Logistyka No 2/2006, p. 42

In the European Union, the market of letters is still the biggest and the most attractive segment of public mailing operators' activity. The market almost always characterized with constant growth of demand. The information of World's Mailing Association shows however that the demand for such services successively falls after 2009. The decrease of the traditional dispatches turnover level is mostly influenced by the development of e-mailing. Thus, the fall of the letter dispatch turnover occurred mostly in highly developed countries with a high rate of using IT. Table No 12 below presents the minimum percentage estimation of growth and fall of the number of letter dispatches in the perspective until 2009 and 2014 in the selected EU's countries.

**Table 12.** Minimum, percentage increase of the number of letters until 2009 and 2014 in the selected EU's countries (estimated information)

Country	2009	2014
Austria	-15	-20
Czech Republic	4	30
Spain	-5	-15
Germany	-4	-8
Slovakia	15	20
Sweden	-4	-8
Great Britain	8	15
Poland	20	30

**Source:** own work based on Wolska G., Obszary działania wybranych publicznych operatorów pocztowych w UE – z uwzględnieniem usług logistycznych The areas of activity of the EU's selected public mailing operators with consideration of logistic services, Logistyka No 2/2006, p. 43

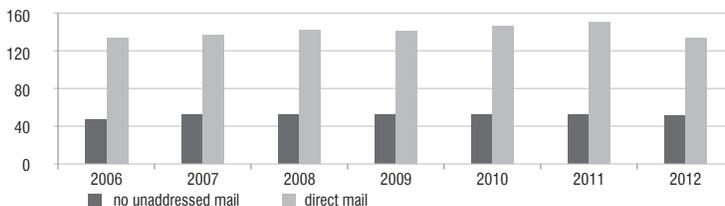
Table No 13 and Diagram No 7 below present the number of dispatches in the national and foreign turnover per 1 Polish inhabitant in the years 2006-2012 to be compared.

**Table 13.** The number of shipment in the national and foreign turnover calculated per a Polish citizen in the years 2006 - 2012

Details	2006	2007	2008	2009	2010	2011	2012
Without non-addressed forms	47.3	52.3	52.5	52.7	52.9	52.8	51.9
With non-addressed forms	133.5	136.2	142	140.6	146.6	150.5	133.7
Details / Changes pace	2007	2008	2009	2010	2011	2012	Change 2012/2006
Without non-addressed forms	1.11	1.00	1.00	1.00	1.00	0.98	1.10
With non-addressed forms	1.02	1.04	0.99	1.04	1.03	0.89	1.00

**Source:** own work based on Baranowska-Skimina A., Rynek usług pocztowych 2011/The mailing services market, the text available online: <http://www.egospodarka.pl/82561,Rynek-uslug-pocztowych-2011,2,39,1.html> (19.10.2013) oraz Raport o stanie rynku pocztowego za rok 2012, Urząd Komunikacji Elektronicznej, [http://www.ECO.gov.pl/files/?id\\_plik=13127](http://www.ECO.gov.pl/files/?id_plik=13127) (19.10.2013)

**Diagram 7.** The number of shipment in the national and foreign turnover calculated per a Polish citizen in the years 2006 - 2012



**Source:** own work

The analysis of estimated data presented in Table No 12 confirms the prognosis indicating a large development potential of the Polish, Czech and Slovak market of letters, i.e. medium developed countries. There is also a noticeable fall in richer countries, i.e. in the Austrian, Spanish, Swedish and German markets. While analyzing the number of dispatches in the Polish national and foreign turnover per 1 Polish inhabitant in the years 2006-2012 there is some interests in mailing services with the division into services with and without addressed forms.

As regards dispatches without addressed forms, their number increased by 11% in 2007 comparing to the number from 2006. In the years 2008-2011 the number of dispatches without addressed forms maintained nearly on the same level. In 2012 the number decreased by 2% comparing to the data from 2011. The decrease was certainly closely related with the Internet popularization and sending data via electronic way. To sum up, in the years 2006-2012 the number of dispatches without addressed forms increased by 10% in 2012 comparing to the level from 2006.

As regards dispatches with addressed forms, their number grew by 2% in 2007 comparing to the data from 2006. In 2008 there was further growth by 4%. In 2009 there was slight decrease by 1% and in 2010 there was growth by 4% and by 3% in 2011. Year 2012 brought decreasing the number of addressed forms dispatches by 11%. In the years 2006-2012 the number of dispatches with addressed forms maintained almost on the same level (growth by 0.2%).

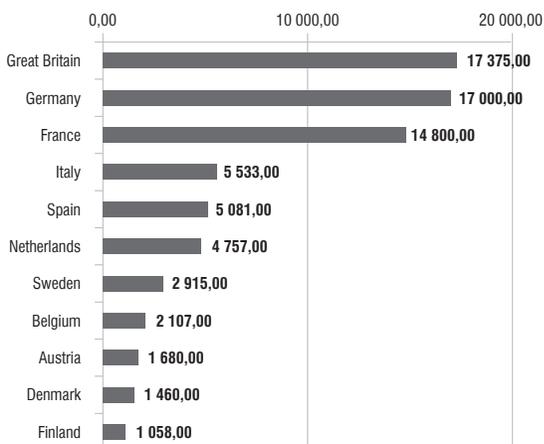
Nowadays a group of mailing operators providing the largest number of letter dispatches in the EU comes from the countries with high level of GNP per capita. In the countries with the lower GNP their number is much smaller. The Commission must consider the fact that due to the enlargement, there are more discrepancies in relative wealth of regions. Principally, a significant number of regions, even whole member states, dispose their GNP per capita less than 45% of an average of all EU's member states. Increased discrepancies in wealth within the EU force the Commission to implement stricter classification of regions (Perkowski 2008, p. 218 and next).

## 4. Estimated incomes of the EU's public operators

Services provided by national operators in the EU overwhelm a wide offer consisting of letter dispatches, parcels connected with logistic services, express parcels and financial services. The entities coming from the countries belonging to the Monetary and Economy Union were subject to the analysis. Their high participation in the while European market results from the fact that those are the biggest EU's economies and the indicated percentage shares reflect mostly the size of the national mailing services market. However the indicated national operators began the expansion within the Monetary and Economy Union offering non-restricted services in the remaining member states.

The diagram below presents information on all dispatches send in particular countries in 2010 presented in millions.

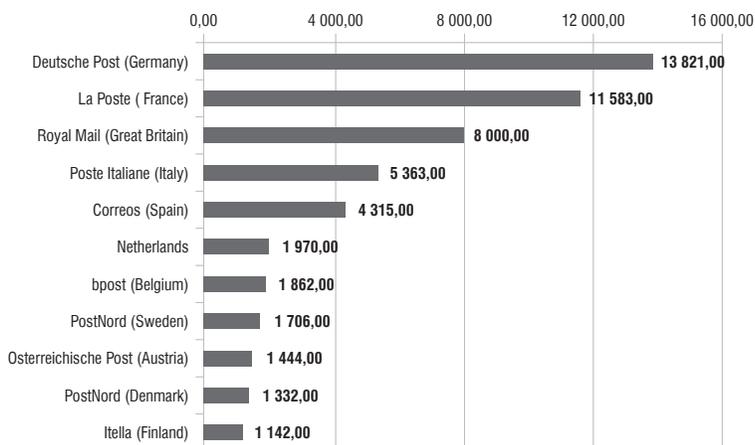
**Diagram 8.** The number of shipment tracked in particular EU's countries in 2010 (in millions)



**Source:** own work based on European postal markets 2012 an overview, p. 11

Still Great Britain is the biggest national operator in the European market despite slight fall of service volume in recent years. The markets overwhelmed by the analysis are the following countries: Great Britain, Germany and France in total they make 2/3 of the whole European mailing market. The diagrams below present incomes of the national operators in particular EU's states included in the research.

**Diagram 9.** Incomes of the national operators in particular EU's countries in 2010 (in millions of Euros)



**Source:** own work based on European postal markets 2012 an overview, p. 13

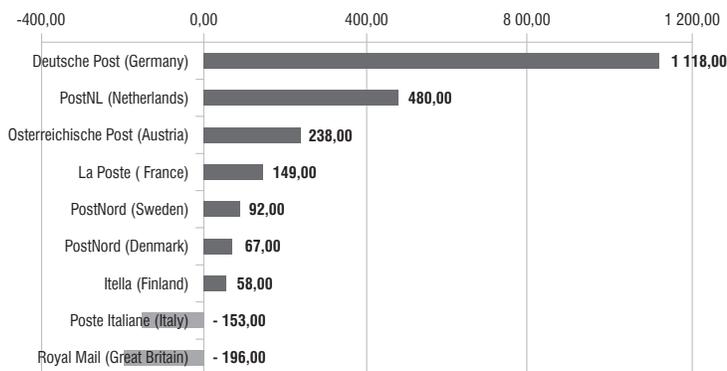
The highest income belongs to the German mailing operator – Deutsche Post. The income of the French operator makes 83% of the German one. The British mailing operator reached income making 58% of the German operator's income.

The lowest income was reached by the operators from: Austria (10% of the German operator's income), Denmark (10% of the German operator's income) and Finland (8% of the German operator's income).

A significant indicator proving financial condition of the EU's mailing operators is EBIT, namely operational profit, i.e. profit before inter-

est and tax payment from taken loans and credits by an entity (Władyka and Smaga 2012, p. 109). Diagram No 10 below presents the EBIT of national operators in particular EU's states in 2010 presented in millions Euro.

**Diagram 10.** EBIT of the national operators in particular EU's countries in 2010 (in millions of Euros)



**Source:** own work based on European postal markets 2012 an overview, p. 13

The lowest EBIT belongs to the German operator. The Dutch operator reached operational profit making 43% of the German operator's profit. The third place is occupied by the Austrian operator with the result of 21% of the Deutsche Post operational profit.

The lowest operational income belongs to the operator from Finland (5% of the German operator's income). The Italian and British mailing operators reached operational loss.

## **5. The quality of common mailing services within the indicator of on-time parcel deliveries and complaints**

Many services are performed in the presence and engagement of other customers. Their presence or engagement influences the level of customer's satisfaction. Another feature of services is changeability, i.e. inconstant service quality. The quality of performed services may change and depends on who, when and where performs it. Those performing the same services may have different education, experiences or skills. It all influences the quality of services and level of customer's satisfaction.

Most companies performing mailing services claims that quality provides higher sales and competitive prevail over competition allowing keeping customers thus they try to conduct quality control of the performed services.

Quality may be improved by staff trainings and motivational system of remuneration (bonuses, awards). Some companies use a principle that a worker performing a particular service is not anonymous to a customer. Each customer is different, with various demands, preferences and expectations. A service provider is not sure which customer shall visit it and what subject he/she will leave (Kielan and Pokora 2003, p. 12 and next).

In a situation of creating a unanimous internal market of mailing services, providing continuity of high quality mailing services demands harmonization of conditions to perform services particularly quality norms concerning time of dispatch course, regularity and reliability of common services and complaint procedures. The quality norms for dispatches in a national turnover are established in the provisions of internal law and the norms for dispatches within the EU are established in the enclosure to directive 97/67/WK. The control (monitoring) of respecting the norms should be performed by an institution independent from operators performing common services and the results should be published at least once a year. As regards service quality requirements member states are obliged to provide access by all operators performing mailing services transparent, simple and not expensive procedures of solving complaints

if mailing services users without infringement of proper international or national principles concerning the systems of refund. Member states are obliged to provide justice and quick solving disputes together with respecting the system of cost refund or recompense if necessary (Strzyczkowski 2011, p. 523 and next).

Consumers' protection using mailing services should be performed by implementation of simple and clear complaint rules concerning loss, content damage or lack. All mailing operators are obliged to use unanimous complaint procedures. There is responsibility of mailing operators in the matters concerning delivery correctness of judicial letters or administrative decisions. A significant solution is imposing punishment onto an indicated operator due to not preserving binding indicators of dispatch course sent within common services. Moreover, contemporary operator's responsibility was widened onto the cases caused by purposed fault of an operator or its gross negligence or delivery delay of registered letter dispatches, i.e. priority letters. A significant factor influencing the quality of performed services is also an external factor such as constructive requirements concerning mailboxes. Mailing operators have duties connected with defense and security of a state and public order and safety. The act implemented an administrative penalty imposed on owners or co-owners of houses for not realizing an obligation to place a mailbox fulfilling particular constructory requirements, i.e. Euro mailbox. The obligation to exchange old mailboxes into the new ones, imposed by the regulations of the act from 12 June 2003 concerning the Mailing law was supposed to be realized within 5 years from its coming into force. Nowadays, mailing operators willingly conduct polls aiming at receiving opinions from consumers on performed services. The aim of such a poll is detecting and removing weak points and improvement of an offer. Polls are often used in order to receive an opinion of a particular group of people on the matters connected with mailing services. The research evaluating punctuality of mailing services have the character of a poll research searching consumers' opinion on new forms of sales analyzing the effects of changes in a company's management, etc. (Michalski 2004, p. 25).

## Summary

Contemporary international relationships are a complex image of constantly changing events and processes where the entities of the international law participate. International organizations also belong to them. They interact multi-dimensionally behavior of states, create new mechanisms of co-existence and order principles of international cooperation. They facilitate states maintaining mutual contacts contributing to widening instruments of more effective flow of information, goods and services. One of the most important role in the whole process of international communication play mailing operators regardless their status or ownership form.

This book presents and approaches readers to the notions concerning the genesis of mailing services operators who are connected by more or less degree of accordance of interests, organizational structure, ability to shape own environment by an organization. There is an attempt to research and economic analyzes of their activity and evaluation of effectiveness of undertaken decisions in the book. The dissertation overwhelms analyzes of selected mailing services operators with its subject range.

The author is aware that the work presented only a small part of the notions concerning mailing services especially within economic entities characteristics performing activity in the sector however including all existing and functioning companies would require a huge research team and it would undoubtedly extend the frames of this still large dissertation.

The work, according to the adopted assumption, does not make a holistic analysis of the research issues. Apart from the indicated limit concerning the selection of organizations being the subject of the research, an assumption of concentrating on the sketch of theoretical basis within the mailing services market was adopted. The complexity and wide subject range of the European integration requires deepened analysis of those organizations extending the frames of the work. Moreover, the issues of the European Community and European Union is widely presented in large dissertations of known and recognized researchers of that matter and thus this work focuses on general and the most important subject issues.

There was an attempt to answer numerous significant questions, according to the author, as well as led issues in order to reach an aim specified

in the work. Thus it was researched why new companies on the market of messenger services break real structural parameters of the process of undertaking decisions, what the opportunities of fulfilling the role and limits of those opportunities are, how much an organization services to tighten cooperation between member states if and how much it fulfills the needs of international cooperation thanks to realization of own functions how the benefits from the cooperation are reached.

The book includes an outline the issue of theoretical basis of mailing services sector organizations and their genesis. There are legal basis of existence and functioning of entities in that specific market and influences of a state and the law on the entities functioning on the market. It was intended to indicate that main structural parameters of the process of making decisions are significant for companies' activity and determine the character of functions realized by them. Indeed, the European integration is not the subject of the analysis in this dissertation the author refers in many places to the basic rights constituted by the European Union referring to the sector.

A general concept and work structure were subject to the adopted substantial range of the dissertation.

The work is a certain manual necessary to realize a didactical aim within the mailing services sector in Europe. The author attempts however to consider certain important non-economic aspects connected with existence and functioning mailing services operators thanks to which the work has a universal character.

The dissertation is based on source materials in the Polish and foreign languages and the Internet sources.

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