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## **The Universal Service Directive does not lay down a social pricing obligation for mobile communications and mobile Internet subscriptions**

*By contrast, social tariffs must be offered to certain categories of consumers for fixed telephone and Internet subscriptions*

The Universal Service Directive<sup>1</sup> defines the minimum set of services which must be available to all end-users. It enables the Member States to require that designated undertakings provide special tariff options or packages to consumers, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing the services referred to. The Member States may share the net cost of universal service obligations between providers of electronic communications networks and services.

In 2013, Base Company and Mobistar, two operators providing electronic communications services in Belgium, brought an action before the Grondwettelijk Hof (Belgian Constitutional Court) for the annulment of the financing mechanism laid down in the Belgian Law transposing the Universal Service Directive. That mechanism requires payment of a contribution by operators whose turnover reaches or exceeds certain thresholds, in such a way as to finance the net costs arising from the provision of specific tariff conditions to certain categories of beneficiary. Base Company and Mobistar submit that the obligation to contribute to the financing of the net costs arising from the provision of mobile communication services and/or internet subscriptions is contrary to EU law.

The Belgian Constitutional Court decided to refer questions to the Court of Justice for a preliminary ruling. It asks, in essence, whether the special tariffs and the financing mechanism provided for in the Universal Service Directive apply to mobile communication services and/or internet subscription services.

In today's judgment, the Court holds first of all that the Universal Service Directive expressly imposes an obligation on the Member States to ensure the connection at a fixed location to a public communications network. However, the term 'at a fixed location' means the opposite of the term 'mobile'.

The Court therefore finds that mobile communication services are, by definition, excluded from the minimum set of universal services defined by the Universal Service Directive, given that their provision does not presuppose access and a connection at a fixed location to a public communications network. Similarly, internet subscription services provided by means of mobile communication services do not come within that minimum set. On the other hand, internet subscription services are included in that set if, in order for them to be provided, there must be a connection to the internet at a fixed location.

The Court points out that Member States are free to consider mobile communication services, including internet subscription services provided by means of mobile communication services, as additional mandatory services, for the purposes of the Universal Service Directive. In that case, a financing mechanism for those services involving specific undertakings cannot be imposed.

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<sup>1</sup> Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (OJ 2002 L 108, p. 51), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11).

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

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

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