



Press and Information

Court of Justice of the European Union

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Judgments in Cases C-485/11 and C-71/12  
Commission v France and Vodafone Malta Limited and Others v Avukat  
Generali and Others

## **The Authorisation Directive does not preclude either the special charge levied in France on electronic communications operators or the Maltese excise duty on mobile telephony services**

*That directive does not restrict Member States' powers to impose non-administrative charges in respect of the provision of electronic communications services*

The Authorisation Directive<sup>1</sup> permits Member States to impose administrative charges on providers of electronic communications services in order to finance the activities of the national regulatory authority responsible for the management of the authorisation system for the provision of those services and for the granting of rights to use numbers and radio frequencies. The charges are meant to cover only the actual costs incurred in the provision of the administrative services by the regulatory authority to electronic communications operators.

### *Case C-485/11 Commission v France*

In France, a special charge, imposed on electronic communications operators, is levied on the amount of subscription charges and other sums paid by users to operators for the provision of electronic communications services.

The Commission takes the view that that special charge is at odds with the Directive because it constitutes an administrative charge levied on the basis of factors relating to the operator's activities or turnover, not on the basis of the actual costs incurred as a result of the authorisation system. Moreover, according to the Commission, the charge is not intended to finance the activities of the national regulatory authority, contrary to the requirements of the Directive. Concluding that the special charge is at odds with the Directive, the Commission brought an action against France for failure to fulfil obligations before the Court of Justice<sup>2</sup>.

In its judgment today, the Court points out, first, that the administrative charges covered by the Directive represent remuneration and that the only purpose of such charges is to cover the administrative costs incurred in the issue, management, control and enforcement of the general authorisation scheme in the field of electronic communications. Thus, a charge the trigger<sup>3</sup> for which is linked to the general authorisation procedure for access to the electronic telecommunications services market constitutes an administrative charge within the meaning of the Directive and may be imposed only in accordance with the requirements set out in the Directive.

However, the Court **finds that the trigger for the charge in question is linked neither to the general authorisation procedure for access to the electronic telecommunications services market nor to the grant of a right to use radio frequencies or numbers. Indeed, that charge relates to the operator's activities, which consist in providing electronic communications services to end users in France.**

<sup>1</sup> Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21).

<sup>2</sup> Similar proceedings for failure to fulfil obligations have also been brought against Spain (Case [C-468/11](#)) and Hungary (Case [C-462/12](#)). Both those Member States support France in the present case.

<sup>3</sup> A legal act or event which gives rise to a tax debt.

The Court observes in that regard that the charge at issue is not levied on all electronic communications operators holding a general authorisation or a right to use radio frequencies or numbers but only on operators holding a general authorisation who already provide their services on the electronic communications services market to end users. It is not therefore levied simply on the basis of the fact that the operator holds a general authorisation or has the right to use radio frequencies or numbers but is linked to the operator's business of providing communications services.

In those circumstances, the Court finds that **the charge at issue does not constitute an administrative charge within the meaning of the Directive and does not therefore fall within its scope. Consequently, the Court dismisses the Commission's action.**

#### *Case C-71/12 Vodafone Malta*

In Malta, operators in the telecommunications sector have claimed before the Maltese courts that excise duty on mobile telephony services is incompatible with the Authorisation Directive. The excise duty, levied at the rate of 3% of the price of those services, is paid by users to operators, who subsequently pass it on to the tax authorities. The Qorti Konstituzzjonali (Constitutional Court, Malta) asks the Court whether the Directive precludes the excise duty in question.

The Court's reply is that excise duty the trigger for which is linked not to a general authorisation procedure for access to the electronic telecommunications services market but to the use of mobile telephony services provided by operators and which is borne by the user of such services **does not constitute an administrative charge within the meaning of the Directive**. Lastly, the Court points out that it is for the Maltese court to verify all the characteristics of the excise duty in question and, if it is in fact akin to a tax on consumption, it will not be incompatible with the Directive.

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

**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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