Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

6 October 2020*

(Reference for a preliminary ruling – Electronic communications networks and services – Directive 2002/20/EC – Article 13 – Fee for rights of use for radio frequencies – Sectoral national legislation subjecting the allocation of public radio frequencies to a charge – National legislation subjecting the grant of administrative concessions on public assets to a tax on the transfer of assets)

In Case C-443/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunal Superior de Justicia del País Vasco (High Court of Justice, Basque Country, Spain), made by decision of 24 April 2019, received at the Court on 7 June 2019, in the proceedings

Vodafone España SAU

v

Diputación Foral de Gipuzkoa

THE COURT (Eighth Chamber),

composed of L.S. Rossi, President of the Chamber, J. Malenovský (Rapporteur) and N. Wahl, Judges,

Advocate General: G. Pitruzzella,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Vodafone España SAU, by J.L. Buendía Sierra, E. Gardeta González and J. Viloria Gutiérrez, abogados,

– Diputación Foral de Gipuzkoa, by J.L. Hernández Goicoechea, abogado, and B. Urizar Arancibia, procuradora,

– the Spanish Government, initially by S. Jiménez García and A. Rubio González, and subsequently by S. Jiménez García, acting as Agents,

– the European Commission, by J. Rius and L. Nicolae, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Spanish.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 13 of 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), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 37) ('Directive 2002/20').

2 The request has been made in proceedings between Vodafone España SAU and the Diputación Foral de Gipuzkoa (Provincial Council of Gipuzkoa, Spain) concerning a tax payable by Vodafone España SAU under the administrative concession for the right of private use of public radio frequencies that was granted to that company.

Legal context

EU law

3 Recitals 18, 30 and 32 of Directive 2002/20 state:

'(18) The general authorisation should only contain conditions which are specific to the electronic communications sector. It should not be made subject to conditions which are already applicable by virtue of other existing national law which is not specific to the electronic communications sector. …

…

(30) Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the national regulatory authority in managing the authorisation system and for the granting of rights of use. …

…

(32) In addition to administrative charges, usage fees may be levied for the use of radio frequencies and numbers as an instrument to ensure the optimal use of such resources. Such fees should not hinder the development of innovative services and competition in the market. …'

4 Under Article 1(1) of that directive:

'The aim of this Directive is to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the Community.'

5 Article 3 of that directive, entitled 'General authorisation of electronic communications networks and services', contains a paragraph 2, which is worded as follows:

'The provision of electronic communications networks or the provision of electronic communications services may, without prejudice to the specific obligations referred to in Article 6(2) or rights of use referred to in Article 5, only be subject to a general authorisation. …'

6 Article 6 of that directive, entitled 'Conditions attached to the general authorisation and to the rights of use for radio frequencies and for numbers, and specific obligations', provides:

'1. The general authorisation for the provision of electronic communications networks or services and the rights of use for radio frequencies and rights of use for numbers may be subject only to the conditions listed in the Annex. Such conditions shall be non-discriminatory, proportionate and transparent and, in the case of rights of use for radio frequencies, shall be in accordance with Article 9 of [Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33)].

…

3. The general authorisation shall only contain conditions which are specific for that sector and are set out in Part A of the Annex and shall not duplicate conditions which are applicable to undertakings by virtue of other national legislation.

4. Member States shall not duplicate the conditions of the general authorisation where they grant the right of use for radio frequencies or numbers.'

7 Article 12 of Directive 2002/20, entitled 'Administrative charges', provides, in paragraph 1 thereof:

'Any administrative charges imposed on undertakings providing a service or a network under the general authorisation or to whom a right of use has been granted shall:

(a) in total, cover only the administrative costs which will be incurred in the management, control and enforcement of the general authorisation scheme and of rights of use and of specific obligations as referred to in Article 6(2), which may include costs for international cooperation, harmonisation and standardisation, market analysis, monitoring compliance and other market control, as well as regulatory work involving preparation and enforcement of secondary legislation and administrative decisions, such as decisions on access and interconnection; and

(b) be imposed upon the individual undertakings in an objective, transparent and proportionate manner which minimises additional administrative costs and attendant charges.'

8 Under Article 13 of that directive, entitled 'Fees for rights of use and rights to install facilities':

'Member States may allow the relevant authority to impose fees for the rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property which reflect the need to ensure the optimal use of these resources. Member States shall ensure that such fees shall be objectively justified, transparent, non-discriminatory and proportionate in relation to their intended purpose and shall take into account the objectives in Article 8 of Directive 2002/21/EC …'

9 The Annex to Directive 2002/20 provides:

'…

A. Conditions which may be attached to a general authorisation

…

2. Administrative charges in accordance with Article 12 of this Directive.

…

B. Conditions which may be attached to rights of use for radio frequencies

…

6. Usage fees in accordance with Article 13 of this Directive.

…'

Spanish law

Legislation governing telecommunications

10 Ley 32/2003 General de Telecomunicaciones (General Telecommunications Law 32/2003) of 3 November 2003 (BOE No 264 of 4 November 2003, p. 38890; 'the 2003 LGT') transposed into Spanish law the telecommunications directives adopted in 2002, including Directive 2002/20.

11 Under Article 49 of that law:

'1. Operators and holders of rights of use for public radio frequencies or numbering resources shall be liable for payment of the charges laid down by law.

2. Those charges shall be used to cover:

(a) the administrative costs incurred in regulatory work involving the preparation and implementation of secondary Community legislation and administrative acts, such as those relating to interconnection and access;

(b) the costs incurred in the management, control and enforcement of the scheme laid down in this Law;

(c) the costs incurred in the management, control and enforcement of rights of use of public land and rights of use of public radio frequencies and numbering;

(d) the management of the notifications governed by Article 6 of this Law;

(e) the costs of international cooperation, harmonisation and standardisation and market analysis.

3. Without prejudice to the provisions of paragraph 2, the purpose of the charges for use of public radio frequencies, numbering and the public land needed for the installation of electronic communications networks shall be to cover the requirement to ensure the optimal use of those resources, account being taken of the value of the property in respect of which a right of use is granted and its scarcity. Those charges must be non-discriminatory, transparent, objectively justified and proportionate to their aim. In addition, they must promote the fulfilment of the objectives and principles laid down in Article 3, in the terms laid down by regulation.

…'

12 The content of that provision was reproduced, in essence, in Article 71 of Ley 9/2014 General de Telecomunicaciones (General Telecommunications Law 9/2014) of 9 May 2014 (BOE No 114 of 10 May 2014, p. 35824; 'the 2014 LGT').

13 Annex I to the 2014 LGT includes a point 3, entitled 'Charge for the allocation of public radio frequencies', paragraph 1 of which, which is essentially identical to paragraph 1 of point 3 of Annex I to the 2003 LGT, is worded as follows:

'The allocation to one or more persons or entities of private use or special use by operators of a public radio frequency shall be subject to an annual charge, according to the terms laid down in this paragraph.

To set the amount to be paid by those legally bound to pay that charge, the market value of the use of the allocated frequency and the profit that could be obtained from it by the recipient shall be taken into account.

…'

14 Under paragraph 6 of point 3 of Annex I to the 2014 LGT:

'… Failure to pay the charge [on the allocation of public radio frequencies] may lead to the suspension or loss of the right to use public radio frequencies …'

15 Under Article 62 of the 2014 LGT, which corresponds in essence to Article 45 of the 2003 LGT:

'…

Special use of public radio frequencies is the use of frequency bands subject to a shared use authorisation, without limitation on the number of operators or users, under technical conditions and for services defined on a case-by-case basis.

Private use of public radio frequencies is the exclusive use, or use by a limited number of users, of certain frequencies in the same material scope.

…

3. In the case of special use of the frequency bands authorised for this purpose through public electronic communications networks installed or operated by electronic communications operators, the granting of rights of use of public radio frequencies shall take the form of a general authorisation.

…

4. The granting of rights of use of public radio frequencies shall take the form of an individual authorisation in the following cases:

(a) Where there is a reserved right of special use by amateur radio enthusiasts or a reserved right of use for other uses with no economic content subject to specific regulation providing for such individual authorisation.

(b) Where the right to private use is granted for self-provision by the applicant, except in the case of the public authorities, which require an allocation of the public domain.

5. In all other cases not referred to in the preceding paragraphs, the right of private use of public radio frequencies requires an administrative concession. The grant of that concession is subject to the applicant having the status of electronic communications operator and to the absence of any of the prohibitions on concluding contracts regulated [by Real Decreto Legislativo 3/2011 por el que se

aprueba el texto refundido de la Ley de Contratos del Sector Público (Royal Legislative Decree 3/2011 approving the consolidated text of the Law on Public Sector Contracts) of 14 November 2011 (BOE No 276 of 16 November 2011, p. 117729)].

…'

Legislation governing the tax on the transfer of assets and documented legal transactions

16 Under Article 7(1) of the Texto refundido de la Ley del Impuestos sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (Consolidated text of the Law governing the tax on the transfer of assets and documented legal transactions), resulting from Real Decreto Legislativo 1/1993, por el que se aprueba el Texto refundido de la Ley del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (Royal Legislative Decree 1/1993 approving the consolidated text of the Law governing the tax on the transfer of assets and documented legal transactions) of 24 September 1993 (BOE No 251 of 20 October 1993, p. 29545), and under Article 7(1) of Norma Foral 18/1987, del territorio histórico de Gipuzkoa, del Impuesto sobre Transmisiones Patrimoniales y Actos Jurídicos Documentados (Provincial Law 18/1987 of the historic territory of Gipuzkoa governing the tax on the transfer of assets and documented legal transactions) of 30 December 1987:

'The following shall constitute taxable transfers of assets:

…

(b) The grant of rights *in rem*, loans, securities, leases, pensions and administrative concessions, except where they are intended to transfer the right to use railway infrastructure or immovable property or port and airport facilities.'

17 Under Article 28(1)(b) of the Reglamento de desarrollo de la Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones, en lo relativo al uso del dominio público radioeléctrico (Regulation implementing General Telecommunications Law 32/2003 of 3 November, governing the use of public radio frequencies), resulting from Real Decreto 863/2008, por el que se aprueba el Reglamento de desarrollo de la Ley 32/2003, de 3 de noviembre, General de Telecomunicaciones, en lo relativo al uso del dominio público radioeléctrico (Royal Decree 863/2008 approving the regulation implementing General Telecommunications Law 32/2003 of 3 November, governing the use of public radio frequencies) of 23 May 2008 (BOE No 138 of 7 June 2008, p. 26305):

'The National Radiocommunication Agency may revoke, by means of the general administrative procedure …, licenses authorising the private use of public radio frequencies for the following reasons:

…

(b) Failure to pay the tax on the transfer of assets and documented legal transactions.

…'

18 Article 2 of Ley 58/2003 General Tributaria (Law 58/2003 on the General Tax Code) of 17 December 2003 (BOE No 302 of 18 December 2003, p. 44987) defines the concept of 'tax' as the levy payable 'without consideration, the chargeable event of which is constituted by transactions, documents or facts which indicate the taxpayer's financial capacity'.

The dispute in the main proceedings and the question referred for a preliminary ruling

19 Vodafone España is a telecommunications operator that provides mobile telephony services in Spain.

20 In 2011, Vodafone España was awarded several concessions for the private use of public radio frequencies for the 2.6 GHz band and, pursuant to point 3 of Annex I to the 2003 LGT, paid the charge for the allocation of public radio frequencies. In accordance with Provincial Law 18/1987 governing the tax on the transfer of assets and documented legal transactions, Vodafone España also carried out the reverse charge procedure and paid the tax on the transfer of assets and documented legal transactions ('the tax on the transfer of assets').

21 Taking the view, however, that that tax was contrary to EU law, Vodafone España requested reimbursement of the amounts it had paid under that law in administrative proceedings.

22 Its request having been rejected, Vodafone España brought an action for annulment before the referring court against the decisions rejecting that request, arguing, in essence, that the obligation to pay the tax on the transfer of assets gives rise to double taxation contrary to Article 13 of Directive 2002/20, since the same fact, namely the administrative concession for the private use of public radio frequencies, gives rise to both the charge for the allocation of public radio frequencies and the tax on the transfer of assets.

23 The Provincial Council of Gipuzkoa disputes the existence of double taxation, relying on the distinction, in Spanish law, between the concept of a 'charge' and that of a 'tax'. It maintains, in essence, that the chargeable event giving rise to the charge for the allocation of public radio frequencies is the allocation of a public radio frequency for private use, whereas the tax on the transfer of assets is levied on the transfer of assets through the grant of private use rights. According to that authority, Articles 12 and 13 of Directive 2002/20 do not limit the possibility of Member States introducing different types of tax levies from those referred to in those articles, such as the tax on the transfer of assets and corporation tax, to which all operators are subject.

24 According to the referring court, the legal regime governing public radio frequencies is, in essence, identical to the general regime established by Articles 84 to 104 of Ley 33/2003, del Patrimonio de las Administraciones Públicas (Law 33/2003 on Government-Owned Assets) of 3 November 2003 (BOE No 264 of 4 November 2003, p. 20254), applicable to all Government-owned property of the Spanish public authorities. The referring court infers from this that a telecommunications operator who becomes the exclusive successful bidder for certain frequencies obtains a genuine administrative concession on public assets, of the same nature as that referred to in Article 7(1)(b) of Provincial Law 18/1987 governing the tax on the transfer of assets and documented legal transactions, the scope of which covers, like any concession, the temporary private use of the public assets granted in return for the payment of a fee.

25 Furthermore, according to the referring court, the fact that non-payment of the tax on the transfer of assets constitutes a ground for revoking the license authorising the use of public radio frequencies could be understood as meaning that, according to the intention of the national legislature, payment of the tax on the transfer of assets is, de facto, a precondition for the grant of the right to private use of public radio frequencies.

26 Taking the view, however, that the dispute before it raises questions of interpretation of EU law, the Tribunal Superior de Justicia del País Vasco (High Court of Justice, Basque Country, Spain) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'[Must] Article 13 [of Directive 2002/20 and related and supplementary provisions of EU law] be interpreted as precluding the Kingdom of Spain, and specifically the fiscally autonomous historic territory of [Gipuzkoa], from making telecommunications operators' right of use of radio frequencies – which is already subject to [the charge for the allocation of public radio frequencies] – subject to [the tax on the transfer of assets] that applies generally to administrative concessions of publicly owned assets, in accordance with local laws governing the said tax[?]'

Consideration of the question referred

27 By its question, the referring court asks, in essence, whether Article 13 of Directive 2002/20 must be interpreted as precluding a Member State, whose legislation provides that the right of use for radio frequencies is subject to a charge for the allocation of public radio frequencies, from also subjecting the grant of administrative concessions in that field to a tax on the transfer of assets applicable generally to the grant of administrative concessions on public assets under legislation that is not specifically applicable to the electronic communications sector.

28 As a preliminary point, it should be noted that, under Article 1 of Directive 2002/20, the aim of that directive is to implement an internal market in electronic communications networks and services through the harmonisation and simplification of authorisation rules and conditions in order to facilitate their provision throughout the European Union.

29 To that end, Directive 2002/20 lays down not only rules governing the procedures for granting general authorisations or rights to use radio frequencies or numbers and the content of those authorisations but also rules setting out the nature and scope of the financial payments related to those procedures which Member States may impose on undertakings in the electronic communications services sector (judgment of 17 December 2015, *Proximus*, C-454/13, EU:C:2015:819, paragraph 19 and the case-law cited).

30 More specifically, Article 12 of Directive 2002/20, entitled 'Administrative charges', states that providers of electronic communications services may be subject to administrative charges intended to finance the activities of the national regulatory authority in managing the authorisation system and granting rights of use.

31 In addition to those administrative charges, Article 13 of that directive, entitled 'Fees for rights of use and rights to install facilities', authorises Member States to make the rights of use for radio frequencies or numbers and the rights to install facilities on, over or under public or private property that they grant to providers of electronic communications networks and services subject to a fee, the purpose of which is to ensure the optimal use of those resources.

32 Thus, according to settled case-law, Member States may not, within the framework of Directive 2002/20, levy any charges or fees in relation to the provision of networks and electronic communication services other than those provided for by that directive (see, to that effect, judgment of 17 December 2015, *Proximus*, C-454/13, EU:C:2015:819, paragraph 20 and the case-law cited), namely those referred to in paragraphs 30 and 31 of the present judgment.

33 In the present case, the referring court is uncertain, in the first place, as to whether a cumulation of fees is compatible with Article 13 of Directive 2002/20.

34 In that regard, it is sufficient to recall that the Court has held that Article 13 of Directive 2002/20 does not preclude a cumulation of several fees, in that it does not preclude national legislation which provides for the charging of a fee intended to favour optimal use of frequencies in addition to another fee which fulfils the same objective, provided that those fees, taken together, satisfy the conditions set out in that article (see, to that effect, judgment of 21 March 2013, *Belgacom and Others*, C-375/11, EU:C:2013:185, paragraph 48).

35 In the second place, the referring court submits that the levy on the transfer of assets at issue in the main proceedings is, under the applicable national law, classified not as a 'fee', the only concept to which Article 13 of Directive 2002/20 refers, but as a 'tax'.

36 In that regard, it follows from the settled case-law of the Court that, in the context of the examination of the tax levy concerned, the referring court cannot be bound by the classification of that levy under the applicable national law and that it is for that court to rely on the objective characteristics of that levy (see, to that effect, judgment of 18 January 2017, *IRCCS – Fondazione Santa Lucia*, C-189/15, EU:C:2017:17, paragraph 29).

37 Consequently, the fact that, in the present case, the tax levy at issue in the main proceedings is classified as a 'tax' under national legislation does not, in itself, preclude it from falling within the scope of Article 13 of Directive 2002/20.

38 In the third place, the referring court asks whether the compatibility with Directive 2002/20 of a 'tax' such as that at issue in the main proceedings may be called into question by the fact that it is governed by legislation which is not specifically applicable to the electronic communications sector.

39 In that regard, it should be noted that, admittedly, Article 6(3) of Directive 2002/20, read in conjunction with recital 18 thereof, states that the general authorisation, which guarantees the right to provide electronic communications networks or services, is to contain only conditions which are specific to the electronic communications sector and not conditions which are applicable to undertakings by virtue of other existing national law which is not specific to that sector.

40 However, as is apparent from Article 6(4) of Directive 2002/20, read in conjunction with parts A and B of the Annex thereto, rights of use for radio frequencies, on the one hand, and the general authorisation, on the other, are subject to separate procedures, the conditions of which are not identical.

41 Consequently, the requirement laid down in Article 6(3) of Directive 2002/20, applicable to the general authorisation, cannot be extended to the fees provided for in Article 13 of that directive and, therefore, the fact that a fee is governed by legislation of a Member State which is not specific to the electronic communications sector cannot, in itself, preclude the application of that directive or, more specifically, Article 13 thereof.

42 In the fourth place, the referring court asks whether the fact that the tax on the transfer of assets is applicable to all economic operators and not only to providers of electronic communications services has any bearing on the applicability of Article 13 of Directive 2002/20 to the dispute in the main proceedings.

43 In that regard, the Court admittedly held that, in view of its characteristics, a charge for which the taxable persons were not exclusively operators providing electronic communications networks or services or those benefiting from the rights provided for in Article 13 of Directive 2002/20 did not constitute a 'fee' within the meaning of that article (see, to that effect, judgment of 4 September 2014, *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 36).

44 However, the Court specified that this was the case because the chargeable event giving rise to the charge at issue in the main proceedings was not linked to the granting of rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property (see, to that effect, judgment of 4 September 2014, *Belgacom and Mobistar*, C-256/13 and C-264/13, EU:C:2014:2149, paragraph 37), the fact that that charge was imposed on all economic operators not being decisive in reaching that conclusion.

45 Accordingly, a fee which is applicable to all economic operators may fall within the scope of Article 13 of Directive 2002/20 in so far as its chargeable event is linked to the granting of rights of use for radio frequencies or numbers or rights to install facilities on, over or under public or private property.

46 This is the case, in particular, where the fee concerned is imposed on undertakings providing electronic communications networks and services in return for the right to use radio frequencies (see, to that effect, judgment of 6 October 2015, *Base Company*, C-346/13, EU:C:2015:649, paragraph 22).

47 In the present case, it appears to follow from the applicable national law, in particular Article 45 of the 2003 LGT, that the grant of an administrative concession on public radio frequencies is essential in order to be able to benefit from the right to exclusive use of public radio frequencies. It also follows from Article 28(1)(b) of the Regulation implementing the 2003 LGT, as approved by Royal Decree 863/2008, that non-payment of the tax on the transfer of assets constitutes a ground for revoking the license authorising such use.

48 It thus appears, subject to verification by the referring court, which alone has jurisdiction to interpret national law, that payment of the tax on the transfer of assets is a precondition for obtaining the right to use radio frequencies and, therefore, that that 'tax' has the characteristics of a fee imposed in return for that right.

49 If, in the light of the foregoing, the referring court were to conclude that the tax on the transfer of assets falls within the scope of Article 13 of Directive 2002/20, it would be for that court to ascertain whether that tax and the charge for the allocation of public radio frequencies, taken together, satisfy the conditions set out in that article (see, to that effect, judgment of 21 March 2013, *Belgacom and Others*, C-375/11, EU:C:2013:185, paragraph 48).

50 In that regard, the fee for the rights of use for radio frequencies which Member States may introduce must be objectively justified, transparent, non-discriminatory and proportionate in relation to its intended purpose and take into account, inter alia, the objectives which are the promotion of competition and efficient use of radio frequencies (see, to that effect, judgment of 21 March 2013, *Belgacom and Others*, C-375/11, EU:C:2013:185, paragraph 46).

51 It is also apparent from Article 13 of Directive 2002/20, read in conjunction with recital 32 thereof, that a fee charged to operators of telecommunications services for the use of radio frequencies must pursue the purpose of ensuring optimal use of those frequencies and not hinder the development of innovative services and competition on the market (judgment of 21 March 2013, *Belgacom and Others*, C-375/11, EU:C:2013:185, paragraph 47).

52 As regards, more specifically, the method of determining the amount of the fee for the use of radio frequencies, the authorisation to use public property which constitutes a scarce resource enables the holder of that authorisation to make significant economic gains and grants that holder advantages as compared with other operators who are also seeking to use and exploit that resource, which justifies imposing a charge which reflects, inter alia, the value of the use of the scarce resource at issue (judgment of 21 March 2013, *Belgacom and Others*, C-375/11, EU:C:2013:185, paragraph 50 and the case-law cited).

53 In those circumstances, the purpose of ensuring that operators make optimal use of scarce resources to which they have access means that the charge must be set at an appropriate level to reflect inter alia the value of the use of those resources, which requires account to be taken of the economic and technical situation of the market concerned (judgment of 21 March 2013, *Belgacom and Others*, C-375/11, EU:C:2013:185, paragraph 51 and the case-law cited).

54 In the light of all the foregoing considerations, the answer to the question referred is that Article 13 of Directive 2002/20 must be interpreted as not precluding a Member State, whose legislation provides that the right to use radio frequencies is subject to a charge for the allocation of public radio frequencies, from also subjecting the grant of administrative concessions in that field to a tax on the transfer of assets applicable generally to the grant of administrative concessions on public assets under legislation that is not specifically applicable to the electronic communications sector, where the chargeable event giving rise to that tax is linked to the granting of rights of use for radio frequencies, provided that that charge and that tax, taken together, satisfy the conditions set out in that article, in particular, the condition relating to the proportionate nature of the amount collected in return for the right to use radio frequencies, which is for the referring court to ascertain.

Costs

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

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

Article 13 of 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), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, must be interpreted as not precluding a Member State, whose legislation provides that the right to use radio frequencies is subject to a charge for the allocation of public radio frequencies, from also subjecting the grant of administrative concessions in that field to a tax on the transfer of assets applicable generally to the grant of administrative concessions on public assets under legislation that is not specifically applicable to the electronic communications sector, where the chargeable event giving rise to that tax is linked to the granting of rights of use for radio frequencies, provided that that charge and that tax, taken together, satisfy the conditions set out in that article, in particular, the condition relating to the proportionate nature of the amount collected in return for the right to use radio frequencies, which is for the referring court to ascertain.

[Signatures]