

Pleas in law and main arguments

- Article 15 of Directive 2002/91/EC provides that the Member States are to adopt the provisions necessary to comply with the directive at the latest on 4 January 2006.
- The Commission states that the Kingdom of Spain has yet to adopt the necessary provisions referred to in Articles 3, 7 and 8 of Directive 2002/91/EC or, in any event, has failed to communicate them to it.

⁽¹⁾ OJ 2003 L 1, p. 65.

⁽²⁾ OJ 2010 L 153, p. 13.

Reference for a preliminary ruling from the Qorti Kostituzzjonali (Malta) lodged on 10 February 2012 — Vodafone Malta Limited and Mobisle Communications Limited vs L-Avukat Ġenerali, Il-Kontrollur tad-Dwana, Il-Ministru tal-Finanzi, and L-Awtorità ta' Malta dwar il-Komunikazzjoni

(Case C-71/12)

(2012/C 118/25)

Language of the case: Maltese

Referring court

Qorti Kostituzzjonali

Parties to the main proceedings

Applicants: Vodafone Malta Limited, Mobisle Communications Limited

Defendants: L-Avukat Ġenerali, Il-Kontrollur tad-Dwana, Il-Ministru tal-Finanzi, L-Awtorità ta' Malta dwar il-Komunikazzjoni

Questions referred

Do the provisions 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), and in particular its Articles 12 and/or 13, prohibit the Member States from imposing a fiscal burden on mobile telecommunications operators ('the operators') that is:

- a duty, called an excise duty, introduced through national legislation;
- calculated as a percentage on the charges levied by mobile telephony operators on their users for the services provided to them by these operators, with the exception of those services exempted by law;

- paid to the mobile telephony operators by their users on an individual basis, and this amount is subsequently passed on to the Comptroller of Customs by all operators offering mobile telephony services, which amount is payable only by the operators and not by other undertakings, including those providing other electronic communications networks and services?

Reference for a preliminary ruling from the Giudice di Pace di Revere (Italy) lodged on 13 February 2012 — Criminal proceedings against Ahmed Ettaghi

(Case C-73/12)

(2012/C 118/26)

Language of the case: Italian

Referring court

Giudice di Pace di Revere

Party/parties to the main proceedings

Ahmed Ettaghi

Questions referred

- In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 4, 6, 7 and 8 of Directive 2008/115/EC ⁽¹⁾ preclude the possibility that a third-country national illegally staying in a Member State may be liable to a fine, for which home detention is substituted by way of criminal-law sanction, solely as a consequence of that person's illegal entry and stay, even before any failure to comply with a removal order issued by the administrative authorities?
- In the light of the principles of sincere cooperation and the effectiveness of directives, do Articles 2, 15 and 16 of Directive 2008/115/EC preclude the possibility that, subsequent to the adoption of the directive, a Member State may enact legislation which provides that a third-country national illegally staying in that Member State may be liable to a fine, for which an enforceable order for expulsion with immediate effect is substituted by way of criminal-law sanction, without respecting the procedure and rights of the foreign national laid down in the directive?
- Does the principle of sincere cooperation established in Article 4(3) TEU preclude national rules adopted during the period prescribed for transposition of a directive in order to circumvent or, in any event, limit the scope of the directive, and what measures must the national court adopt in the event that it concludes that there was such an objective?

⁽¹⁾ OJ 2008 L 348, p. 98.