



Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

28 July 2016*

(Reference for a preliminary ruling — Electronic communications networks and services — Directive 2002/21/EC — Article 3 — Impartiality and independence of the national regulatory authorities — Directive 2002/20/EC — Article 12 — Administrative charges — National regulatory authority subject to provisions applicable to public finances and to provisions for limiting and streamlining public authority spending))

In Case C-240/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 15 May 2015, received at the Court on 22 May 2015, in the proceedings

Autorità per le Garanzie nelle Comunicazioni

v

Istituto Nazionale di Statistica — ISTAT,

Presidenza del Consiglio dei Ministri,

Ministero dell'Economia e delle Finanze,

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, C. Toader, A. Rosas, A. Prechal and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Autorità per le Garanzie nelle Comunicazioni, by M. Clarich, avvocato,
- the Italian Government, by G. Palmieri, acting as Agent, and by P. Gentili, avvocato dello Stato,
- the Netherlands Government, by M. Bulterman and M. de Ree, acting as Agents,

* Language of the case: Italian.

— the European Commission, by V. Di Bucci, G. Braun and L. Nicolae, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 28 April 2016,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 3 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; ‘the initial version of the Framework Directive’), 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, and corrigendum, OJ 2013 L 241, p. 8) (‘the Framework Directive’), and of Article 12 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).
- 2 This request has been made in proceedings between the Autorità per le Garanzie nelle Comunicazioni (the Communications Regulator, Italy; ‘AGCOM’), on the one hand, and the Istituto Nazionale di Statistica — ISTAT (National Institute of Statistics, Italy; ‘ISTAT’), the Presidenza del Consiglio dei Ministri (Presidency of the Council of Ministers, Italy) and the Ministero dell’Economia e delle Finanze (Ministry for the Economy and Finance, Italy), on the other, concerning the listing of AGCOM in the list of public authorities falling within the scope of the consolidated public profit and loss accounts.

Legal context

EU law

The Framework Directive

- 3 Recital 11 in the preamble to the Framework Directive reads as follows:

‘In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article [345 TFEU]. National regulatory authorities should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks.’

- 4 Article 2(g) of the Framework Directive defines ‘national regulatory authority’ (‘NRA’) as ‘the body or bodies charged by a Member State with any of the regulatory tasks assigned in this Directive and the Specific Directives’. Under Article 2(l) of the Framework Directive, the Authorisation Directive is one of the Specific Directives.

- 5 Directive 2009/140 introduced, in Article 3 of the initial version of the Framework Directive, new paragraphs 3, 3a, 3b and 3c, on the independence of the NRAs. Recital 13 of Directive 2009/140 states in that regard:

‘The independence of the [NRAs] should be strengthened in order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, [an NRA] responsible for *ex ante* market regulation or for resolution of disputes between undertakings is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as [an NRA] under the regulatory framework. ... It is important that [NRAs] responsible for *ex ante* market regulation should have their own budget allowing them, in particular, to recruit a sufficient number of qualified staff. In order to ensure transparency, this budget should be published annually.’

- 6 Article 3 of the Framework Directive, headed ‘[NRA]’, provides :

‘1. Member States shall ensure that each of the tasks assigned to [NRAs] in this Directive and the Specific Directives is undertaken by a competent body.

2. Member States shall guarantee the independence of [NRAs] by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that [NRAs] exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that [NRAs] have adequate financial and human resources to carry out the task assigned to them.

3a. Without prejudice to the provisions of paragraphs 4 and 5, [NRAs] responsible for *ex ante* market regulation or for the resolution of disputes between undertakings ... shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. ...

...

Member States shall ensure that [NRAs] referred to in the first subparagraph have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to actively participate in and contribute to the Body of European Regulators for Electronic Communications (BEREC) [created by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Office (OJ 2009 L 337, p. 1)].

...’

The Authorisation Directive

7 Recital 30 of the preamble to the Authorisation Directive states:

‘Administrative charges may be imposed on providers of electronic communications services in order to finance the activities of the [NRA] in managing the authorisation system and for the granting of rights of use. Such charges should be limited to cover the actual administrative costs for those activities. For this purpose transparency should be created in the income and expenditure of [NRAs] by means of annual reporting about the total sum of charges collected and the administrative costs incurred. This will allow undertakings to verify that administrative costs and charges are in balance.’

8 Article 12 of the Authorisation Directive, headed ‘Administrative charges’, provides:

‘1. 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 ..., 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.

2. Where [NRAs] impose administrative charges, they shall publish a yearly overview of their administrative costs and of the total sum of the charges collected. In the light of the difference between the total sum of the charges and the administrative costs, appropriate adjustments shall be made.’

Italian law

9 AGCOM was established by Legge n. 249 — Istituzione dell’Autorità per le garanzie nelle comunicazioni e norme sui sistemi delle telecomunicazioni e radiotelevisivo (Law No 249 establishing [AGCOM] and making provision for telecommunications and radio television systems) of 31 July 1997 (ordinary supplement to GURI No 177, of 31 July 1997). Article 1(9) of that law provides that AGCOM is to ‘adopt rules concerning its organisation and operation, its budgets, financial reports and management of expenditure, even derogating from the general State accounting provisions, and on staff regulations and staff remuneration’.

10 Article 7(2) of Decreto legislativo n. 259 — Codice delle comunicazioni elettroniche (Legislative Decree No 259 on the electronic communications code), of 1 August 2003 (ordinary supplement to GURI No 214, of 15 September 2003), conferred on AGCOM the functions of an NRA within the meaning of Article 3 of the Framework Directive.

- 11 Legge n. 311 — Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2005) (Law No 311 — Provisions for drawing up the annual and multiannual State budget (Finance Act for 2005)), of 30 December 2004 (ordinary supplement to GURI No 306, of 31 December 2004; ‘Law No 311’), sets limits on increases in public authority expenditure. Article 1(5) thereof provides:

‘In order to achieve the European Union objectives with respect to public finances ..., for the period of three years from 2005 to 2007, the total public authority expenditure within the consolidated profit and loss accounts, as listed, for 2005, in List 1 annexed to this Law and, for subsequent years, in a decision of [ISTAT] published in the [GURI] by no later than 31 July of each year, may not be more than 2% higher than the updated estimates of the preceding year, as stated in the budget estimates.’

- 12 Legge No 266 — Disposizioni per la formazione del bilancio annuale e pluriennale dello Stato (legge finanziaria 2006) (Law No 266 — Provisions for drawing up the annual and multiannual State budget (Finance Act for 2006)), of 23 December 2005 (ordinary supplement to GURI No 302, of 29 December 2005), granted to certain independent administrative authorities, one being AGCOM, substantial financial autonomy. In particular, Article 1(65) of that Law provides:

‘From 2007 onwards, the operating expenses ... of [AGCOM] shall, in so far as they are not covered by funding from the national budget, be financed by the relevant market in the manner laid down in the rules in force. The amount of the contributions shall be determined by decision of each authority, within the limits provided for by law. The contributions shall be paid directly to the relevant authority. ...’

- 13 Decreto-legge n. 223 — Disposizioni urgenti per il rilancio economico e sociale, per il contenimento e la razionalizzazione della spesa pubblica, nonché interventi in materia di entrate e di contrasto all’evasione fiscale (Decree-Law No 223 — Urgent provisions for economic and social recovery, limiting and streamlining public spending, and action in relation to revenue and combating tax evasion), of 4 July 2006 (GURI No 153, of 4 July 2006, p. 4), converted to a law, after amendment, by Law No 248, of 4 August 2006 (ordinary supplement to GURI No 186, of 11 August 2006) (‘Decree-Law No 223’), contains provisions designed to reduce the operating costs of public, non-territorial, administrative authorities and bodies. Article 22(1) thereof provides:

‘The appropriations allocated for 2006 and assigned to expenditure on intermediate consumption in the budget of public, non-territorial administrative authorities and bodies, ... covered by Article 1(5) and (6) of [Law No 311], [subject to certain exceptions], shall be reduced by 10% ...’

- 14 Legge n. 196 — Legge di contabilità e finanza pubblica (Law No 196 — Law on accounting and public finances), of 31 December 2009 (ordinary supplement to GURI No 303, of 31 December 2009), in the version applicable to the main proceedings (‘Law No 196’), contains amended general national legislation on accounting and public finances. Article 1(2) thereof provides:

‘For the application of the provisions on public finances, for 2011, “public authorities” shall mean the bodies and persons listed for statistical purposes in the list within the communication published on 24 July 2010 by [ISTAT] in [GURI] No 171 and, as from 2012, the bodies and persons listed for statistical purposes in the list within the communication published on 30 September 2011 by [ISTAT] in [GURI] No 228, as subsequently updated under paragraph 3 of this article, based on the definitions provided by relevant European Union regulations, the independent authorities and the administrative authorities referred to in Article 1(2) of Legislative Decree No 165 of 30 March 2001, as amended.’

15 On 28 September 2012, ISTAT published in the GURI the Elenco delle amministrazioni pubbliche inserite nel conto economico consolidato individuate ai sensi dell'articolo 1, comma 3, della legge 31 dicembre 2009, n. 196 (List of public authorities covered by the consolidated public profit and loss accounts under Article 1(3) of Law No 196) (GURI No 227, of 28 September 2012, p. 92; 'the ISTAT list'). AGCOM is named in that list.

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

16 AGCOM, which, in its capacity as an NRA under the Framework Directive, is responsible for *ex ante* market regulation and the resolution of disputes between undertakings, brought before the Tribunale amministrativo regionale del Lazio (Regional Administrative Court of Lazio, Italy) an action in which it challenged the decision of the Italian legislature to apply to independent authorities the provisions on public finances and, in particular, the application to it of certain provisions for limiting and streamlining public spending.

17 By a judgment of 12 June 2013, the Tribunale amministrativo regionale del Lazio (Regional Administrative Court of Lazio) dismissed that action.

18 AGCOM brought an appeal against that judgment before the Consiglio di Stato (Council of State, Italy). Before the latter court, AGCOM claims that the effect of its being made unconditionally subject to the provisions of national law on public finances, laid down in Article 1(2) of Law No 196, and of its being made subject to the specific provisions on the limiting and streamlining of expenditure and operating costs of public authorities, laid down in Article 1(5) of Law No 311 and in Article 22(1) of Decree-law No 223, is to impose on it constraints both in terms of organisation and funding that are likely to reduce the effectiveness of its regulatory activity in the telecommunications sector. AGCOM claims that the Italian legislature should have given it the benefit of more favourable provisions, comparable to those laid down with respect to the Banca d'Italia (Bank of Italy), or, at least, should have limited the spending reductions to the proportion of its budget that is financed by the State.

19 ISTAT, the Presidency of the Council of Ministers and the Ministry for the Economy and Finances contend that the appeal brought by AGCOM should be dismissed.

20 The referring court states, initially, that Article 1(5) of Law No 311 pursues a number of specific objectives aimed at limiting spending attributable to the 'extended public sector' and, to that end, requires authorities on the ISTAT list to comply with certain provisions on the reduction of public spending.

21 The referring court observes that, in order to give a ruling on the dispute before it, it must determine whether the national legislation at issue is contrary to the principles of NRA impartiality and independence that the Member States must protect, both in terms of funding and organisation, and the principle that the NRAs are to self-finance the greater part of their work in the management, control and enforcement of the general authorisation rules under Article 12 of the Authorisation Directive. While the position of AGCOM does not appear to the referring court to be manifestly unfounded, the referring court considers nonetheless that it is more plausible that EU law does not preclude the national legislation at issue.

22 In that regard, the referring court considers, first, that, although the NRAs enjoy specific prerogatives of independence and impartiality, their status is not so distinct from that of all other public authorities as to mean that the application to them of provisions on public finances and on limiting and streamlining public spending that are directed at all public authorities are automatically unlawful. There would, in the opinion of the referring court, only be a conflict with EU law if it was demonstrated that, because of the degree or nature of the restriction prescribed, an NRA was actually

and specifically prevented from obtaining all the resources required, in terms of staff, expertise and funds, for the performance of its tasks. The existence of such an impediment cannot however be presumed and AGCOM has adduced no evidence to that effect.

- 23 Second, the referring court considers that it is impossible to accept AGCOM's argument that only performance objectives and obligations should be imposed on it, as has been done in the case of the Bank of Italy, in particular because AGCOM has failed to demonstrate that it is, with regard to the matter at issue, comparable to that institution. In addition, the two specific provisions on limiting and streamlining expenditure that are objected to by AGCOM leave it significant discretion.
- 24 Third, the referring court is of the opinion that it cannot be inferred from the provisions of the Authorisation Directive that a national legislature cannot impose measures for limiting and streamlining spending on an NRA with respect to the proportion of its spending that is self-financed, which is the case for more than 90% of AGCOM's expenditure, bearing in mind, in particular, that the administrative charges levied by AGCOM are, in accordance with Italian case-law, to be classified as taxes and, consequently, fall within the State's general power of taxation.
- 25 In those circumstances, the Consiglio di Stato (Conseil d'État) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Do the principles of impartiality, financial autonomy and organisational independence which NRAs must be guaranteed by the Member States under Article 3 of the Framework Directive, and the principle referred to in Article 12 of the Authorisation Directive that the NRAs must be largely self-financing, preclude national legislation (such as that relevant to the present proceedings) which also makes those NRAs subject, in general, to legislation on public finances and, in particular, to specific provisions on limiting and streamlining expenditure incurred by public administrative authorities?'

Consideration of the question referred for a preliminary ruling

- 26 By its question, the referring court seeks, in essence, to ascertain whether Article 3 of the Framework Directive and Article 12 of the Authorisation Directive must be interpreted as precluding national legislation that subjects an NRA, within the meaning of the Framework Directive, to national provisions applicable to public finances and, in particular, to provisions for limiting and streamlining expenditure of public authorities, such as those at issue in the main proceedings.
- 27 It is apparent from the order for reference that the provisions at issue in the main proceedings are, in essence: (i) Article 1(2) of Law No 196, under which the public authorities listed by ISTAT are subject to the general Italian legislation applicable to accounting and public finances; (ii) Article 1(5) of Law No 311, under which, for the years 2005 to 2007, the total spending of public authorities within the scope of the public profit and loss accounts, as listed by ISTAT, may not be more than 2% higher than the updated estimates of the preceding year, and (iii) Article 22(1) of Decree-law No 223, under which the appropriations allocated for 2006 and assigned to intermediate consumption in the budgets of non-territorial public administrative authorities and bodies, covered by, inter alia, Article 1(5) of Law No 311, are reduced by 10%.
- 28 It must be observed at the outset that, having regard to the wording of the latter two provisions, as set out in the request for a preliminary ruling, the extent to which those provisions are applicable to AGCOM is not obvious. AGCOM challenges, before the referring court, its listing in the ISTAT list as published on 28 September 2012, although those provisions were apparently applicable only for the years 2005 to 2007, on the one hand, and for the year 2006, on the other.

- 29 In addition, AGCOM, in the written observations that it has submitted to the Court, has made reference to not only the provisions cited by the referring court but to certain other provisions relating to the public finances that are applicable to it and which, in its opinion, cause the reduction of its independence to be greater than that caused by the provisions specifically mentioned by the referring court.
- 30 However, in the procedure under Article 267 TFEU, it is not for the Court to rule on the applicability of provisions of national law or to establish the facts relevant to the decision in the main proceedings. On the contrary, the Court must take into account the factual and legal context of the question referred for a preliminary ruling as defined by the order for reference (see, *inter alia*, to that effect, judgments of 13 November 2003, in *Neri*, C-153/02, EU:C:2003:614, paragraphs 34 and 35, and 30 June 2005, in *Tod's and Tod's France*, C-28/04, EU:C:2005:418, paragraph 14).
- 31 Accordingly, the Court cannot substitute its judgment for that of the referring court as to whether the latter two provisions still applied to AGCOM when the main proceedings were brought before the referring court (see, to that effect, judgment of 14 September 1999, in *Gruber*, C-249/97, EU:C:1999:405, paragraph 19) and must take it as established that that is indeed the case. Further, the Court must answer the question referred having regard solely to the provisions set out by the referring court.
- 32 As regards, first, Article 3 of the Framework Directive, it must be stated that the aim of that provision, in its initial version, was, essentially, pursuant to recital 11 of that directive, to guarantee the independence and the impartiality of NRAs by ensuring that regulation and operation are functionally separate (judgment of 6 March 2008, in *Comisión del Mercado de las Telecomunicaciones*, C-82/07, EU:C:2008:143, paragraph 13).
- 33 That said, recital 11 of the initial version of the Framework Directive stated that '[NRAs] should be in possession of all the necessary resources, in terms of staffing, expertise, and financial means, for the performance of their tasks'. That objective was not, however, expressly carried over into the articles of that directive, beyond it being stated in Article 3(1) of that directive, in its initial version, that the Member States are to ensure that each of the tasks assigned to NRAs in the Framework Directive and the Specific Directives is undertaken by a competent body, and it being stated in Article 3(3) of the Framework Directive that the Member States are to ensure that the NRAs exercise their powers impartially and transparently.
- 34 As is apparent from recital 13 of Directive 2009/140, the intention of the EU legislature was, by means of that directive, to strengthen the independence of NRAs in order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions. Accordingly, Article 3(3) of the Framework Directive now provides expressly that Member States are to ensure that NRAs exercise their powers impartially, transparently and in a timely manner and that they have the required financial and human resources to carry out the tasks assigned to them.
- 35 The first subparagraph of Article 3(3a) of the Framework Directive further requires NRAs responsible for *ex ante* market regulation or for the resolution of disputes between undertakings to act independently and not to seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing EU law, while adding that 'this shall not prevent supervision in accordance with national constitutional law'. As regards the third subparagraph of Article 3(3a), that states that Member States are to ensure that NRAs referred to in the first subparagraph are to have separate annual budgets, which are to be published, and adequate financial and human resources to enable them actively to participate in and contribute to BEREC.
- 36 It is apparent from those provisions that the Framework Directive now imposes the requirement that, in order to guarantee the independence and the impartiality of NRAs, the Member States are to ensure, in essence, that the NRAs, as a whole, are to have adequate financial and human resources to

enable them to carry out the tasks assigned to them and, with respect to NRAs responsible for *ex ante* market regulation or for the resolution of disputes between undertakings, that they act independently. However, there is nothing in those provisions to indicate that compliance with those requirements precludes, as a matter of principle, an NRA being subject to provisions of national law applicable to public finances, and, in particular, to provisions for limiting and streamlining public authority spending, such as those at issue in the main proceedings.

- 37 In that regard, it must be noted that the second sentence of the first subparagraph of Article 3(3a) of the Framework Directive expressly provides that, while NRAs responsible for *ex ante* market regulation or for the resolution of disputes between undertakings are to act independently and are not to seek or take instructions from any other body in relation to the exercise of the tasks assigned to them, ‘this shall not prevent supervision in accordance with national constitutional law’.
- 38 As stated, in essence, by the Advocate General in points 43 and 44 of his Opinion, that provision implies that NRAs may, under Article 3 of the Framework Directive, properly be made subject to certain rules of budgetary monitoring by the national parliament, which includes being subject to *ex ante* measures that control public spending.
- 39 Such control measures cannot, therefore, be deemed to impair the independence and impartiality of NRAs, as guaranteed by the Framework Directive, and, accordingly, to be incompatible with Article 3 of that directive, unless it can be established that such measures may prevent the NRAs concerned from satisfactorily carrying out the tasks assigned to them by the Framework Directive and the Specific Directives, or that they are contrary to the conditions that the Framework Directive imposes on the Member States to ensure that the NRAs have to a sufficient degree the independence and impartiality that that directive requires.
- 40 However, it is for the referring court to determine whether the provisions of national law at issue in the main proceedings entail that AGCOM will not have adequate financial and human resources to carry out satisfactorily the tasks assigned to it, and in particular, that AGCOM in its capacity as an NRA responsible for *ex ante* market regulation or for the resolution of disputes between undertakings will not be able actively to participate in and contribute to BEREC. The referring court states in that regard that AGCOM has adduced no evidence to that effect and that AGCOM has done no more than assert, in general terms, that the provisions at issue in the main proceedings are detrimental to its financial autonomy and, consequently, its independence.
- 41 It must also be observed that, as is apparent from the order for reference and from paragraph 27 of this judgment, the specific provisions for limiting and streamlining public authority spending, at issue in the main proceedings, are confined, with respect to the former, to placing an upper limit on any increase in spending that can be decided upon by AGCOM and, with respect to the latter, to imposing a reduction only on ‘expenditure on intermediate consumption’. Further, as stated by the referring court, those two provisions, given their generality, allow to AGCOM significant discretion with respect to their implementation. Moreover, the provisions are applicable to public administrative authorities and bodies as a whole.
- 42 In addition, there is no dispute, in the main proceedings, that AGCOM continues to have a separate annual budget that is published, in accordance with the third subparagraph of Article 3(3a) of the Framework Directive.
- 43 Moreover, as also stated, in essence, by the Advocate General in points 48 to 50 of his Opinion, in the light of their fundamentally different functions, AGCOM cannot justifiably claim that the Framework Directive requires Member States to guarantee to NRAs the same quality of independence that EU law provides with respect to central banks.

- 44 That being the case, it is clear that, subject to the findings of the referring court, Article 3 of the Framework Directive cannot preclude the application to an NRA, within the meaning of that directive, of provisions of national law on public finances and, in particular, provisions for limiting and streamlining public authority spending, such as those at issue in the main proceedings.
- 45 As regards, second, Article 12 of the Authorisation Directive, it must be recalled that the administrative charges which Member States may impose, under that article, on undertakings providing a service or a network under the general authorisation or to which a right of use has been granted, in order to finance NRA activities, must be exclusively intended to cover the overall administrative costs relating to the activities mentioned in Article 12(1)(a) of that directive. Those charges cannot therefore be intended to cover expenditure relating to tasks other than those listed in that provision, and in particular not administrative costs of any kind incurred by the NRA (see, to that effect, judgment of 18 July 2013, in *Vodafone Omnitel and Others*, C-228/12 to C-232/12 and C-254/12 to C-258/12, EU:C:2013:495, paragraphs 38 to 40 and 42).
- 46 Further, it is apparent from Article 12(2) of the Authorisation Directive, read in the light of recital 30 thereof, that those charges must cover the actual administrative costs relating to the activities listed in Article 12(1)(a) and must be in balance with those costs. Accordingly, the total sum of the income obtained from the charge concerned cannot exceed the total of the costs relating to those activities (see, to that effect, judgment of 18 July 2013, in *Vodafone Omnitel and Others*, C-228/12 to C-232/12 and C-254/12 to C-258/12, EU:C:2013:495, paragraphs 41 and 42).
- 47 While Article 12 of the Authorisation Directive thus enables NRAs to finance part of their activities by levying administrative charges, that provision cannot be regarded as conferring on AGCOM an absolute right to determine the level of those charges with no regard to the provisions of national law applicable to public finances that are designed to control and limit public spending. Those charges are, as is stated in the order for reference, to be classified as taxes and fall within the scope of the Italian State's general power of taxation. The determination of the level of those charges by AGCOM cannot therefore be exempted from such provisions where, moreover, those provisions are not contrary to Article 3 of the Framework Directive, as stated in paragraph 39 of this judgment.
- 48 In the light of all the foregoing, the answer to the question referred is that Article 3 of the Framework Directive and Article 12 of the Authorisation Directive must be interpreted as not precluding national legislation that subjects an NRA, within the meaning of the Framework Directive, to provisions of national law applicable to public finances and, in particular, to provisions for limiting and streamlining the spending of public administrative authorities, such as those at issue in the main proceedings.

Costs

- 49 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 (Second Chamber) hereby rules:

Article 3 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), as amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, and Article 12 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), must be interpreted as not precluding national legislation that subjects a national regulatory authority, within the meaning

of Directive 2002/21, as amended by Directive 2009/140, to provisions of national law applicable to public finances and, in particular, to provisions for limiting and streamlining the spending of public administrative authorities, such as those at issue in the main proceedings.

[Signatures]