

3. Is the contribution levied under Article 5 of Law 8/2009 of 28 August on the funding of Corporación de Radio y Televisión Española transparent, as is required by Article 6(1) and the Annex of Directive 2002/20/EC, if it is not known what specific activity Corporación de Radio y Televisión Española provides by way of universal service or public service?

(¹) OJ 2002 L 108, p. 21.

**Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 13 February 2018 —
Orange España, S.A.U. v Tribunal Económico-Administrativo Central (TEAC)**

(Case C-120/18)

(2018/C 161/39)

Language of the case: Spanish

Referring court

Audiencia Nacional, Sala de lo Contencioso-Administrativo

Parties to the main proceedings

Applicant: Orange España, S.A.U.

Defendant: Tribunal Económico-Administrativo Central (TEAC)

Questions referred

1. May Article 6(1) 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 (¹) be interpreted as meaning that a Member State may levy on telecommunications operators an annual financial contribution such as that provided for in Article 5 of Ley 8/2009, de 28 de agosto, de financiación de la Corporación de Radio y Televisión Española (Law 8/2009 of 28 August on the funding of Corporación de Radio y Televisión Española), for the purpose of contributing to the funding of Corporación de Radio y Televisión Española, in view of the positive impact on the telecommunications sector resulting from the new rules governing the television and audiovisual sector and, in particular, from the increase in fixed and mobile broadband services and from the fact that Corporación de Radio y Televisión Española no longer broadcasts advertisements or paid or conditional-access content, taking the following circumstances into account:

— that new legislation did not provide justification, nor was it confirmed in the relevant tax year, that such a positive, direct or indirect, impact existed for those undertakings;

— that contribution is set at 0,9 % of the gross operating revenue invoiced in the relevant tax year and is not calculated on the basis of the revenue obtained from the provision of audiovisual services and advertising, the increase in that revenue or the profits generated by the activity. Furthermore, that contribution constitutes a levy provided for in Article 5 of Law 8/2009, as originally worded, and may not be justified in relation to the audiovisual service concerned, that article being the basis for the refusal, in the decision contested in the present administrative action, to grant the applicant's requests for a refund of the payments made but not due and the rectification of the self-assessments?

2. Is the contribution levied on telecommunications undertakings operating in Spain in more than one Autonomous Community proportionate, as is required by Article 6(1) of Directive 2002/20/EC, in the light of the method of calculation laid down in Article 5 of Law 8/2009, to which reference has been made?

3. Is the contribution levied under Article 5 of Law 8/2009 of 28 August on the funding of Corporación de Radio y Televisión Española transparent, as is required by Article 6(1) and the Annex of Directive 2002/20/EC, if it is not known what specific activity Corporación de Radio y Televisión Española provides by way of universal service or public service?

(¹) OJ 2002 L 108, p. 21.

**Request for a preliminary ruling from the Audiencia Nacional (Spain) lodged on 14 February 2018 —
Vodafone España, S.A.U. v Tribunal Económico-Administrativo Central (TEAC)**

(Case C-121/18)

(2018/C 161/40)

Language of the case: Spanish

Referring court

Audiencia Nacional, Sala de lo Contencioso-Administrativo

Parties to the main proceedings

Applicant: Vodafone España, S.A.U.

Defendant: Tribunal Económico-Administrativo Central (TEAC)

Questions referred

1. May Article 6(1) 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 (¹) be interpreted as meaning that a Member State may levy on telecommunications operators an annual financial contribution such as that provided for in Article 5 of Ley 8/2009, de 28 de agosto, de financiación de la Corporación de Radio y Televisión Española (Law 8/2009 of 28 August on the funding of Corporación de Radio y Televisión Española), for the purpose of contributing to the funding of Corporación de Radio y Televisión Española, in view of the positive impact on the telecommunications sector resulting from the new rules governing the television and audiovisual sector and, in particular, from the increase in fixed and mobile broadband services and from the fact that Corporación de Radio y Televisión Española no longer broadcasts advertisements or paid or conditional-access content, taking the following circumstances into account:

— that new legislation did not provide justification, nor was it confirmed in the relevant tax year, that such a positive, direct or indirect, impact existed for those undertakings;

— that contribution is set at 0,9 % of the gross operating revenue invoiced in the relevant tax year and is not calculated on the basis of the revenue obtained from the provision of audiovisual services and advertising, the increase in that revenue or the profits generated by the activity. Furthermore, that contribution constitutes a levy provided for in Article 5 of Law 8/2009, as originally worded, and may not be justified in relation to the audiovisual service concerned, that article being the basis for the refusal, in the decision contested in the present administrative action, to grant the applicant's requests for a refund of the payments made but not due and the rectification of the self-assessments?

2. Is the contribution levied on telecommunications undertakings operating in Spain in more than one Autonomous Community proportionate, as is required by Article 6(1) of Directive 2002/20/EC, in the light of the method of calculation laid down in Article 5 of Law 8/2009, to which reference has been made?