



Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

17 September 2015*

(Reference for a preliminary ruling — Telecommunications networks and services — Directives 2002/19/EC, 2002/20/EC, 2002/21/EC, 2002/22/EC — Free circulation of terminal equipment for terrestrial mobile telecommunications — Directive 1999/5/EC — Tax on the use of equipment — General authorisation or licence for use — Subscription contract equivalent to a general authorisation or licence — Differential treatment of users depending on whether or not they have a subscription contract)

In Case C-416/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Commissione tributaria regionale di Mestre-Venezia (Italy), made by decision of 8 August 2014, received at the Court on 3 September 2014, in the proceedings

Fratelli De Pra SpA,

SAIV SpA

v

Agenzia Entrate — Direzione Provinciale Ufficio Controlli Belluno,

Agenzia Entrate — Direzione Provinciale Ufficio Controlli Vicenza,

THE COURT (Eighth Chamber),

composed of A. Ó Caoimh, President of the Chamber, C. Toader and C.G. Fernlund (Rapporteur),
Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Fratelli De Pra SpA and SAIV SpA, by C. Toniolo, C. Basso and G. Toniolo, avvocati,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,

* Language of the case: Italian.

— the European Commission, by G. Braga da Cruz and by L. Nicolae and D. Recchia, acting as Agents,

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

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10), in particular Article 8 thereof; of Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive) (OJ 2002 L 108, p. 7); 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); 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); and of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ 2002 L 108, p. 51), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009 (OJ 2009 L 337, p. 11) (Directive 2002/22).
- 2 The request has been made in proceedings between Fratelli De Pra SpA ('De Pra') and the Agenzia Entrate — Direzione Provinciale Ufficio Controlli Belluno (Belluno Tax Authority), in the first case, and SAIV SpA ('SAIV') and the Agenzia Entrate — Direzione Provinciale Ufficio Controlli Vicenza (Vicenza Tax Authority), in the second, concerning the refusal by those tax authorities to grant a request for reimbursement of the charges paid for government licences ('TCG') paid by De Pra and SAIV under subscription contracts for mobile telephony service.

Legal context

EU law

Directive 1999/5

- 3 Recital 32 in the preamble to Directive 1999/5 states that '... radio equipment and telecommunications terminal equipment which complies with the relevant essential requirements should be permitted to circulate freely; ... such equipment should be permitted to be put into service for its intended purpose; ... the putting into service may be subject to authorisations on the use of the radio spectrum and the provision of the service concerned'.
- 4 Article 1(1) and (4) of that directive provides:

'1. This Directive establishes a regulatory framework for the placing on the market, free movement and putting into service in the Community of radio equipment and telecommunications terminal equipment.

...

4. This Directive shall not apply to equipment listed in Annex I.'

5 Article 8(1) of Directive 1999/5 provides:

'Member States shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of apparatus bearing the CE marking ...'

Directive 2002/19

6 Article 1 of Directive 2002/19 states that that directive harmonises the way in which Member States regulate access to, and interconnection of, electronic communications networks and associated facilities, and concerns the relationships between suppliers of networks and services. It establishes rights and obligations for operators and for undertakings seeking interconnection and/or access to their networks or associated facilities.

Directive 2002/20

7 Article 2 of Directive 2002/20 defines 'general authorisation' as 'a legal framework established by the Member State ensuring rights for the provision of electronic communications networks or services and laying down sector specific obligations that may apply to all or to specific types of electronic communications networks and services, in accordance with this Directive'.

8 Article 12 of that directive, entitled 'Administrative charges', provides in paragraph (1)(a):

'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; ...'

Directive 2002/22

9 Article 1(1) of Directive 2002/22 concerns the provision of electronic communications networks and services to end-users. It aims inter alia to ensure the availability throughout the European Union of good-quality publicly available services.

10 With regard to ensuring provision of universal service within an environment of open and competitive markets, Article 1(2) of Directive 2002/22 defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition.

- 11 Article 20 of that directive, entitled ‘Contracts’, provides in paragraph 1:

‘Member States shall ensure that, when subscribing to services providing connection to a public communications network and/or publicly available electronic communications services, consumers, and other end-users so requesting, have a right to a contract with an undertaking or undertakings providing such connection and/or services. The contract shall specify in a clear, comprehensive and easily accessible form at least:

...’

- 12 The items listed in Article 20(1) include: the identity and address of the undertaking, the services provided, details of prices and tariffs, the duration of the contract and the conditions for renewal and termination of services and of the contract.

Italian law

- 13 Article 1 of Decree No 641 of the President of the Republic on the regulation of charges paid for government licences (decreto del Presidente della Repubblica n. 641, Disciplina delle tasse sulle concessioni governative), of 26 October 1972 (Ordinary Supplement to GURI No 292 of 11 November 1972) (‘Presidential Decree No 641/1972’), provides:

‘The administrative acts and other acts listed in the annexed Tariff shall be subject to [the TCG] in so far as and as set out in the detailed rules therein.’

- 14 Article 21 of the Tariff annexed to Presidential Decree No 641/1972, in the version thereof applicable to the disputes in the main proceedings, provides that any ‘licence, or other equivalent document, for the use of terminal equipment for a terrestrial public mobile radio communication service’ is to be subject to the TCG.

- 15 Footnote 1 to Article 21 of that Tariff reads as follows:

‘The charge shall be payable together with the subscription fees, with a reference being made in each bill to the number of months of use taken into consideration.’

- 16 Article 3 of Ministerial Decree No 33/90 concerning the terrestrial mobile radio communication service provides:

‘The subscriber may make his own arrangements or make use of the company SIP [Società Italiana per l’Esercizio Telefonico] for the acquisition and maintenance of the user’s terminal equipment. It is for the SIP to make arrangements for the user to be issued with a document certifying that he is subscribed to the service; that document, which is equivalent in all respects to a radio station licence, must contain details of the type of terminal equipment and the corresponding certification and must be presented by the subscriber to the public authorities upon request.’

- 17 Article 8 of Legislative Decree No 269/2001, implementing Directive 1999/5, is worded as follows:

‘The placing on the market and putting into service of apparatus bearing the CE marking which indicates its conformity with all provisions of this decree shall not be prohibited, restricted or otherwise impeded.’

18 Article 160 of Legislative Decree No 259 establishing the Electronic Communications Code (decreto legislativo n. 259/2003 — Codice delle comunicazioni elettroniche) of 1 August 2003 (Ordinary Supplement to the GURI No 214 of 15 September 2003) is worded as follows:

‘1. The special licence issued by the Minister must be kept at every radio station for the use of which a general authorisation has been obtained.

2. For stations receiving broadcasting services, a subscription shall stand in the place of a licence.’

19 Article 2(4) of Decree-Law No 4/2014, subsequently converted into Law No 50/2014, provides:

‘For the purposes of Article 21 of the Tariff annexed to [Presidential Decree No 641/1972], Article 160 of [Legislative Decree No 259/2003], is to be interpreted as meaning that the term “radio station” also covers terminal equipment for a terrestrial public mobile radio communication service.’

The actions in the main proceedings and the questions referred for a preliminary ruling

20 De Pra and SAIV applied to the Agenzia Entrate — Direzione Provinciale Ufficio Controlli Belluno and the Agenzia Entrate — Direzione Provinciale Ufficio Controlli Vicenza respectively, requesting reimbursement of the charges paid to cover the TCG. When those tax authorities refused, they each brought proceedings before the Commissione tributaria regionale di Mestre-Venezia (Regional Tax Court, Mestre, Venice).

21 In support of those actions, they argue that the principle of the free movement and putting into service of terminal equipment enshrined in Directive 1999/5 is incompatible with an administrative measure such as the general authorisation or licence provided for under the Italian rules. They consider that the TCG must be regarded as a tax and take the view that, as there is no chargeable event for the purposes of the charge, they are entitled to reimbursement of the amounts paid by way of that charge.

22 Although in its order for reference the national court refers to the orders in *Agricola Esposito* (C-492/09, EU:C:2010:766) and *Umbra Packaging* (C-355/13, EU:C:2013:867), which concern a charge such as the TCG, it finds that new facts have arisen since those orders were delivered and that, accordingly, the cases before it cannot be adjudicated on the basis of those orders. It refers in particular to the following three points.

23 First, in those orders the Court did not rule on the compatibility of a charge such as the TCG in the light of Directive 1999/5.

24 Secondly, the Italian State adopted Article 2(4) of Decree-Law No 4/2014, subsequently converted into Law No 50/2014, subsequently to those orders.

25 Thirdly, by decision of 2 May 2014 — and therefore also subsequently to those orders — the Corte suprema di Cassazione a Sezioni Unite (Supreme Court of Cassation, Combined Chambers) held that Directive 1999/5 did not prevail over Directives 2002/19, 2002/20, 2002/21 and 2002/22 (‘the Networks Directives’) referred to by De Pra and SAIV and that a general authorisation or a licence within the meaning of Directive 2002/20 was therefore necessary for the use of the terminal equipment concerned.

²⁶ In those circumstances, the Commissione tributaria regionale di Mestre-Venezia decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘1. With regard to terminal equipment for a terrestrial mobile radio communication service, are the following provisions of national legislation compatible with EU law (Directive 1999/5 and [the Networks Directives]):

- Article 2(4) of Decree-Law No 4/2014, subsequently converted into Law No 50/2014;
- Article 160 of Legislative Decree No 259/2003; and
- Article 21 of the Tariff annexed to Presidential Decree No 641/1972,

which, equating terminal equipment with radio stations, require a user to obtain a general authorisation and to be issued with a special licence for a radio station, and deem those activities to be chargeable events?

Accordingly, with specific reference to the use of terminal equipment, is the obligation imposed by the Italian State on users to obtain a general authorisation and a licence for a radio station compatible with EU law when the placing on the market, the free movement and the putting into service of terminal equipment is already comprehensively governed by EU instruments (Directive 1999/5) which do not lay down any requirement for general authorisation and/or for a licence?

Additionally, are the general authorisation and the licence required under national legislation compatible with EU law despite the following facts:

- a general authorisation is a measure which is not for a user of terminal equipment, but rather for businesses involved in the provision of electronic communications networks and services (Articles 1, 2 and 3 of Directive 2002/20);
- a licence is intended to grant individual rights to use radio frequencies and to use numbers, which are clearly not related to the use of terminal equipment;
- the EU legislation does not impose any obligation to obtain a general authorisation or to be issued with a licence for terminal equipment;
- Article 8 of Directive 1999/5/EC provides that Member States “shall not prohibit, restrict or impede the placing on the market and putting into service in their territory of apparatus bearing the CE marking”; and
- a radio station is different — in substantive terms and in terms of its mode of regulation, as well as by its very nature — from terminal equipment for a terrestrial mobile radio communication service?

2. Are the following provisions of national legislation compatible with EU law (Directive 1999/5 and Directive 2002/22, in particular Article 20 thereof):

- Article 2(4) of Decree-Law No 4/2014, subsequently converted into Law No 50/2014;
- Article 160 of Legislative Decree No 259/2003;
- Article 21 of the Tariff annexed to Presidential Decree No 641/1972;
- Article 3 of Ministerial Decree No 33/1990;

on the basis of which

- the contract referred to in Article 20 [of Directive 2002/22] — established between a operator and a user, designed to regulate commercial relations between consumers or end-users and one or more firms which provide the connection or services concerned — may “in itself” constitute a document which is equivalent to a general authorisation and/or licence for a radio station, without any intervention, activity or supervision on the part of the public administrative authorities;
 - the contract must also include details of the type of terminal equipment and the corresponding certification (not provided for under Article 8 of [Directive 1999/5])?
3. Are Article 2(4) of Decree-Law No 4/2014 (subsequently converted into Law No 50/2014), Article 160 of Legislative Decree No 259/2003 and Article 21 of the Tariff annexed to Presidential Decree No 641/1972, read together, compatible with EU law in providing that only one particular category of users — namely, anyone holding a contract technically referred to as “a subscription” — is obliged to have a general authorisation and accordingly a licence for a radio station, while no general authorisation or licence is required in the case of other persons using electronic communications services on the basis of a contract, simply because their contract is referred to by a different name (pay-as-you-go or top-up service)?
4. Does Article 8 of Directive 1999/5 preclude national legislation such as the provisions referred to in Article 2(4) of Decree-Law No 4/2014 (subsequently converted into Law No 50/2014), namely, Article 160 of Legislative Decree No 259/2003 and Article 21 of the Tariff annexed to Presidential Decree No 641/1972, which envisages:
- administrative activity resulting in the grant of a general authorisation and licence for a radio station,
 - the payment of a government licence charge in connection with such activity,
- that being conduct which could constitute a restriction on the putting into service, use and free movement of terminal equipment?’

Consideration of the questions referred

Preliminary observations

- ²⁷ By its first three questions, the referring court asks the Court about the compatibility of the Italian legislation with the rules of EU law. It must be borne in mind, however, that it is not the task of the Court, in preliminary ruling proceedings, to rule upon the compatibility of provisions of national law with the legal rules of the European Union. By contrast, the Court does have jurisdiction to give the national court full guidance on the interpretation of EU law in order to enable it to determine the issue of compatibility for the purposes of the case before it (see judgment in *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraph 23 and the case-law cited, and order in *Agricola Esposito*, C-492/09, EU:C:2010:766, paragraph 19).

The first and fourth questions

- ²⁸ By its first and fourth questions, which it is appropriate to consider together, the referring court asks, in essence, whether Directive 1999/5, in particular Article 8 thereof, and the Networks Directives must be interpreted as precluding national legislation governing the application of a charge such as the TCG

under which the use of terminal equipment for terrestrial mobile radio communication under a subscription contract is subject to a general authorisation or licence and also the payment of such a charge.

- 29 The Court held in the order in *Agricola Esposito* (C-492/09, EU:C:2010:766) that two of the Networks Directives, being Directives 2002/20 and 2002/21, did not preclude a charge such as the TCG. It confirmed that analysis in relation to Directive 2002/20 in the order in *Umbra Packaging* (C-355/13, EU:C:2013:867).
- 30 In the present case, the referring court asks whether Directive 1999/5 and the Networks Directives preclude national rules, such as those establishing the TCG, observing in that regard that those rules provide for the obligation not only to pay the TCG, but especially to obtain an authorisation from the public administrative authorities. It also points to a number of changes in Italian law which were not in place when those orders were delivered.
- 31 Those changes, set out in paragraphs 24 and 25 of this judgment, relate to the adoption of Article 2(4) of Decree-Law No 4/2014, subsequently converted into Law No 50/2014, and to a decision handed down by the Corte di cassazione, do not however have any bearing on the Court's interpretation of Directives 2002/20 and 2002/21 in those orders.
- 32 The information provided by the referring court indicates that the changes to Italian law referred to by it concern the interpretation of the existing rules and do not add any new obligations.

Directive 1999/5

- 33 According to recital 32 in the preamble thereto, Directive 1999/5 aims to ensure the free circulation inter alia of telecommunications terminal equipment which complies with certain essential requirements defined in that directive. Under Article 1 thereof, that directive thus establishes a regulatory framework for the placing on the market, free movement and putting into service in the European Union of inter alia that equipment. Article 8 thereof, entitled 'Free movement of apparatus', states that Member States are not to prohibit, restrict or impede the placing on the market and putting into service in their territory of apparatus bearing the CE marking referred to in Annex VII, which proves its conformity with all provisions of Directive 1999/5.
- 34 The referring court asks whether the requirement of an authorisation and the payment of a charge, such as that provided for in the rules at issue in the main proceedings, give rise to obstacles which are contrary to that directive, in particular Article 8 thereof.
- 35 With regards to the existence of an obligation for the final consumer to obtain an authorisation, it should be noted that, according to the referring court, the Corte di cassazione held that the subscription contract offered by the operator of the telephone network is the legal document which enables the consumer to use the terminal equipment and replaces in all its effects the so-called 'radio station licence'. The wording of the second question referred thus states that the subscription contract may in itself constitute a document which is equivalent to a general authorisation and/or licence for a radio station, without any intervention, activity or supervision on the part of the public administrative authorities.
- 36 In their written observations, De Pra and SAIV stated in a similar vein that the national legislature created a legal fiction with the sole aim of maintaining a chargeable event for the purposes of levying the TCG when subscription contracts are concluded for mobile telephony services. They stated that no administrative activities were performed by the public administrative authorities.

- 37 It thus seems that no particular approval or even document is required by the public administrative authorities, as the subscription contract is equivalent to the authorisation or radio station licence and serves as a chargeable event for the purposes of the TCG.
- 38 If that is the case, which it is for the national court to ascertain, those rules do not impose any intervention by the public administrative authorities which might give rise to an obstacle to the free circulation of that equipment, contrary to Directive 1999/5.
- 39 Next, as regards the application of a charge such as the TCG, it applies not only to terminal equipment for terrestrial mobile radio communication but also to subscription contracts concluded for the use of that equipment. The levying of such a charge does not impede the sale of the terminal equipment, which may be sold without an obligation to enter into a subscription contract in Italy; nor does it apply in any adverse manner to terminal equipment originating from other Member States, with the result that nor does it constitute an obstacle to the free circulation of that equipment.

The Networks Directives

- 40 As regards, first of all, Directives 2002/20 and 2002/21, it should be noted that the Court has held they do not apply to a charge such as the TCG, which concerns the use of terminal equipment for terrestrial mobile radio communication. The Court has held that the tax base of such a charge is not the provision of electronic communications networks and services and that private use of a mobile telephony service by a subscriber does not presuppose the provision of a network or electronic communications service within the meaning of Directive 2002/20 (order in *Agricola Esposito*, C-492/09, EU:C:2010:766, paragraph 35). The Court has further held that Directive 2002/21 does not apply to equipment coming within the scope of Directive 1999/5, which covers use of telecommunications terminal equipment intended for private use, including mobile telephones (order in *Agricola Esposito*, C-492/09, EU:C:2010:766, paragraph 42).
- 41 Next, the argument put forward by De Pra and SAIV to the effect that a charge such as the TCG is contrary to Article 12 of Directive 2002/20 because it is not an administrative charge paid by way of fees intended to cover only the administrative costs incurred in the issue, management, control and enforcement of the applicable general authorisation scheme, cannot be upheld. The Court has held previously that a charge 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 ultimately borne by the user of such services does not fall within the scope of Article 12 (see judgment in *Vodafone Malta and Mobisile Communications*, C-71/12, EU:C:2013:431, paragraphs 25 and 29).
- 42 Lastly, regarding the obligation to obtain a general authorisation not provided for by Directive 2002/20 which might be contrary to that directive, it must be observed, as evidenced by paragraphs 35 to 37 of this judgment, that a general authorisation such as that at issue in the main proceedings, of which the subscription contract is an equivalent, is intended to serve merely as the chargeable event for the purposes of the TCG. Its purpose is therefore not to authorise the provision of network services and is not contrary to the obligations arising under that directive.
- 43 Secondly, as regards Directives 2002/19 and 2002/22, it should be observed that, as provided for in Article 1, Directive 2002/19 harmonises the way in which access to, and interconnection of, electronic communications networks and associated facilities are regulated, and concerns the relationships between suppliers of networks, not the use of mobile telephony equipment by end-users.

- 44 As provided under Article 1, Directive 2002/22 concerns the provision of electronic communications networks and services to end-users. It aims to ensure the availability throughout the European Union of good-quality, publicly-available services. With regard to the provision of universal service, it defines the minimum set of services of specified quality to which all end-users have access, at an affordable price in the light of specific national conditions, without distorting competition.
- 45 That directive thus lays down minimum standards and does not prohibit the application of other measures, including fiscal measures, which have no impact on those standards.
- 46 Consequently, the answer to the first and fourth questions is that Directive 1999/5, in particular Article 8 thereof, and the Networks Directives must be interpreted as not precluding national rules on the application of a charge such as the TCG under which the use of terminal equipment for terrestrial mobile radio communication under a subscription contract is subject to a general authorisation or a licence and to the payment of such a charge, provided that the subscription contract itself is equivalent to a licence or general authorisation and, accordingly, no intervention is required in that regard by the public administrative authorities.

The second question

- 47 By its second question, the referring court asks, in essence, whether Article 20 of Directive 2002/22 and Article 8 of Directive 1999/5 must be interpreted as precluding, for the purposes of the application of a charge such as the TCG, a subscription contract for mobile telephony services from being equated with a general authorisation or a radio station licence, which must moreover include details of the type of equipment concerned and the corresponding certification.
- 48 As regards, first of all, equating such a subscription contract with a general authorisation or a radio station licence for the purposes of application of a charge such as the TCG, it must be observed that Directive 2002/22 concerns the provision of networks and electronic communications services to end-users; it does not regulate the levying of a charge such as that at issue in the main proceedings. It follows that that directive does not preclude a national legislature from providing that the chargeable event for the purposes of the charge is the subscription contract concluded between the mobile telephony services provider and the terminal equipment user and that that contract is to be equated with the general authorisation associated with that charge.
- 49 Next, regarding the content of that subscription contract, Article 20 of Directive 2002/22 sets out the items that it must ‘at least’ contain.
- 50 It thus follows from the wording of Article 20 that it does not preclude national rules from providing that subscription contracts for mobile telephony services must contain, in addition to the items required under Directive 2002/22, other items such as the type of terminal equipment and the corresponding certification. It also follows that those additional items do not constitute an obstacle to the free circulation of the equipment in question contrary to Article 8 of Directive 1999/5.
- 51 Consequently, the answer to the second question is that Article 20 of Directive 2002/22 and Article 8 of Directive 1999/5 must be interpreted as not precluding, for the purposes of the application of a charge such as the TCG, a subscription contract for mobile telephony services from being equated with a general authorisation or a radio station licence, which must moreover include details of the type of equipment concerned and the corresponding certification.

The third question

- 52 By its third question, the referring court asks, in essence, whether EU law, as laid down in Directive 1999/5, the Networks Directives and Article 20 of the Charter of Fundamental Rights of the European Union ('the Charter'), must be interpreted as precluding differential treatment of users of terminal equipment for terrestrial mobile radio communication, depending on whether they conclude a subscription contract for mobile telephony services or purchase those services in the form of pay-as-you-go or top-up cards, under which only the former are subject to rules such as those establishing the TCG.
- 53 It must be borne in mind in that regard that Article 20 of the Charter provides that everyone is equal before the law. Under Article 51 of the Charter, however, its provisions apply to Member States only when they are implementing EU law. In the present case, as evidenced by the answer to the first and fourth questions, since the Networks Directives and Directive 1999/5 do not regulate the application of a charge such as that at issue in the main proceedings and there is nothing in the file submitted to the Court showing that those rules implement EU law, that provision does not apply to those rules.
- 54 Moreover, in so far as that question concerns the application only to subscribers of a mobile telephony service of a rule providing for authorisation from the public administrative authorities, it must be remembered, as evidenced by paragraph 38 of this judgment, that in practice no intervention by the public administrative authorities is required, since the subscription contract itself is to be equated with an authorisation.
- 55 It follows that the answer to the third question is that, in a case such as that in the main proceedings, EU law, as laid down in Directive 1999/5, the Networks Directives and Article 20 of the Charter, must be interpreted as not precluding differential treatment of users of terminal equipment for terrestrial mobile radio communication, depending on whether they conclude a subscription contract for mobile telephony services or purchase those services in the form of pay-as-you-go or top-up cards, under which only the former are subject to rules such as those establishing the TCG.

Costs

- 56 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:

1. Directives:

- **1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity, in particular Article 8 thereof;**
- **2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access 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;**

- 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); and
- 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive), as amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009

must be interpreted as not precluding national rules on the application of a charge such as the charge paid for a government licence under which the use of terminal equipment for terrestrial mobile radio communication under a subscription contract is subject to a general authorisation or a licence and to the payment of such a charge, provided that the subscription contract itself is equivalent to a licence or general authorisation and, accordingly, no intervention is required in that regard by the public administrative authorities.

2. Article 20 of Directive 2002/22, as amended by Directive 2009/136, and Article 8 of Directive 1999/5 must be interpreted as not precluding, for the purposes of the application of a charge such as the charge paid for a government licence, a subscription contract for mobile telephony services from being equated with a general authorisation or a radio station licence, which must moreover include details of the type of equipment concerned and the corresponding certification.
3. In a case such as that in the main proceedings, European Union law, as laid down in Directives 1999/5, 2002/19, 2002/20, as amended by Directive 2009/140, 2002/21 and 2002/22, as amended by Directive 2009/136, and in Article 20 of the Charter of Fundamental Rights of the European Union, must be interpreted as not precluding differential treatment of users of terminal equipment for terrestrial mobile radio communication, depending on whether they conclude a subscription contract for mobile telephony services or purchase those services in the form of pay-as-you-go or top-up cards, under which only the former are subject to rules such as those establishing the charge paid for a government licence.

[Signatures]