Form of order sought

— annul decision 8/VII/2008 No C(2008) 3411 final, notified on 11 July 2008, excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) in so far as it makes certain financial corrections to be borne by Italy.

Pleas in law and main arguments

By the contested decision the Commission excluded from Community financing chargeable to the EAGGF four categories of expenditure incurred by the Italian State from 2001 to 2006. They were corrections relating to certain export refunds of fruit and vegetables and sugar, aid for citrus processing in respect of the financial years 2004 and 2005, the amount of the additional levy to be applied to milk products which in production and marketing exceed the milk quotas allocated to them in relation to the 2002-2003 marketing campaign and area/arable crops aid in respect of 2004, 2005 and 2006.

In support of its claims the applicant submits that the controls carried out were correct and fair.


rights of authors and composers and, quite clearly, the societies whose presence in the territory is well established are fully able to satisfy that requirement.

By the second plea, the applicant alleges infringement and misapplication of Article 81 EC and the illogical nature of the reasons stated in the Decision, in that, in its efforts to demonstrate the practicability of multi-territory licence management for the broadcasting of musical works via satellite or cable, or over the internet, the Commission itself ultimately demonstrates that the collecting societies do not engage in parallel behaviour. The Commission's accusation is in fact invalidated by the examples that it cites itself of the grant by collecting societies of licences covering a broader area than the territory in which an individual society operates.

By the third plea, the applicant alleges infringement and misapplication of Article 81 EC because, in the event that the Commission should find that there is concerted practice (which the applicant denies), such a practice would have no restrictive effect on competition in that territorial delimitations constitute the necessary corollary of the exclusivity of the rights held by authors and composers.

By the fourth plea, the applicant alleges that the Commission has acted in breach of the audi alteram partem rule and in infringement of Article 253 EC through failure to state adequate reasons for its decision; breach of the principle of proportionality and of the principle of legal certainty; and the contradictory and illogical nature of the measures laid down in Article 4(2) of the Decision. The wholly indeterminate nature of the 'review' requested from the collecting societies places SIAE unfairly in a situation of uncertainty as regards the identification of measures which are regarded by the Commission as sufficient to put an end to the alleged concerted practice. Furthermore, given that the Commission expressly recognises that the fact of limiting the licence to the territory of the other collecting society does not amount to restriction of competition, it is manifestly incompatible with that premiss to order the collecting societies to carry out a bilateral review of the territorial delimitation in all their licences for broadcasting via satellite or cable, or online, and, thus, to provide the Commission with a copy of the review of all those reciprocal representation agreements. Moreover, since the Commission requires a 'bilateral' review of the territorial delimitations, SIAE's full compliance with Article 4(2) of the Decision is nevertheless beyond SIAE's own decision-making competence, since it is also subject to the independent views of another 23 collecting societies.

By the fifth plea, the applicant alleges infringement of Article 253 EC through failure to state adequate reasons for its decision; breach of the principle of proportionality and of the principle of legal certainty; and the contradictory and illogical nature of the measures laid down in Article 4(2) of the Decision. The wholly indeterminate nature of the 'review' requested from the collecting societies places SIAE unfairly in a situation of uncertainty as regards the identification of measures which are regarded by the Commission as sufficient to put an end to the alleged concerted practice. Furthermore, given that the Commission expressly recognises that the fact of limiting the licence to the territory of the other collecting society does not amount to restriction of competition, it is manifestly incompatible with that premiss to order the collecting societies to carry out a bilateral review of the territorial delimitation in all their licences for broadcasting via satellite or cable, or online, and, thus, to provide the Commission with a copy of the review of all those reciprocal representation agreements. Moreover, since the Commission requires a 'bilateral' review of the territorial delimitations, SIAE's full compliance with Article 4(2) of the Decision is nevertheless beyond SIAE's own decision-making competence, since it is also subject to the independent views of another 23 collecting societies.

**Pleas in law and main arguments**

The decision contested in the present case is the same as that at issue in Case T-394/08 Regione Sardegna v Commission and Case T-408/08 S.F. Turistico Immobiliare v Council and Commission.

The applicant relies on the following pleas in support of its action:

— infringement of Article 16 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (1), in so far as that provision authorises the opening of the formal investigation procedure only in cases of 'misuse of aid' and not for the 'creation of unlawful aid': it follows, according to the applicant, that the entire formal investigation procedure is invalid.