

**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.

In this case the applicant relies on infringement of the duty to state reasons, the principle of proportionality, Articles 11, 12 and 14 of Commission Regulation (EC) No 1392/2001 of 9 July 2001 laying down detailed rules for applying Council Regulation (EEC) No 3950/92 establishing an additional levy on milk and milk products <sup>(1)</sup>, Article 7(4) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy, Article 31 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(2)</sup>, Article 31 of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy <sup>(3)</sup>, Articles 22 and 30 of Commission Regulation (EC) No 2419/2001 of 11 December 2001 laying down detailed rules for applying the integrated administration and control system for certain Community aid schemes established by Council Regulation (EEC) No 3508/92 <sup>(4)</sup>, and Articles 50, 51 and 30 of Commission Regulation (EC) No 796/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers <sup>(5)</sup>.

<sup>(1)</sup> OJ L 187 of 10.7.2001, p. 19.

<sup>(2)</sup> OJ L 160 of 26.6.1999, p. 103.

<sup>(3)</sup> OJ L 209 of 11.8.2005, p. 1.

<sup>(4)</sup> OJ L 327 of 12.12.2001, p. 11.

<sup>(5)</sup> OJ L 141 of 30.4.2004, p. 18.

**Action brought on 30 September 2008 — SIAE v Commission**

(Case T-433/08)

(2008/C 301/95)

*Language of the case: Italian*

**Parties**

*Applicant:* Società Italiana degli Autori ed Editori — SIAE (Rome, Italy) (represented by: M. Siragusa, M. Mandel, L. Vullo, and S. Valentino, lawyers)

*Defendant:* Commission of the European Communities

**Form of order sought**

The applicant claims that the Court of First Instance should:

- annul Articles 3 and 4(2) of the Decision;
- order the Commission to pay the costs incurred by the applicant in the present proceedings;
- order any other measure, including measures of inquiry, that it considers appropriate.

**Pleas in law and main arguments**

The Decision contested in the present proceedings is the same as that contested in Case T-392/08 *AEPI v Commission*.

In support of its action, the applicant relies on five pleas in law.

By the first plea, the applicant alleges infringement and misapplication of Article 81 EC, and lack of a preparatory inquiry, in so far as the Decision makes a finding of concerted practice even though there is no evidence to support that finding apart from the mere fact that many reciprocal representation agreements restrict the power to grant licences to the territory in which the other collecting society operates. In that connection, the Commission disregards the fact that many collecting societies believe that they can best guarantee the rights of their members by entrusting their catalogues or repertoires to collecting societies which can offer efficient protection of the

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 in so far as it has failed to state adequate reasons as regards the fact that the Commission did not inform the societies of the essential factual evidence on which, following its research into the market, it based its refusal to accept the commitments proposed by SIAE.

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.

## Action brought on 3 October 2008 — Studio Vacanze v Commission

(Case T-436/08)

(2008/C 301/96)

Language of the case: Italian

### Parties

*Applicant:* Studio Vacanze (Budoni, Italy) (represented by: M. Cannata, lawyer)

*Defendant:* Commission of the European Communities

### Forms of order sought

Principal forms of order sought:

- Annul the decision of the Commission of the European Communities of 2 July 2008;
- Order the Commission to pay the costs of the proceedings.

Alternative form of order sought:

Annul Article 2(2) of the contested decision in so far as it orders recovery of the aid found to be incompatible, together with interest, as from the date on which the amounts were made available to the recipients until the date of their actual recovery.

### 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 (!), 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;