

Since, under Article 10(2) of the directive, producers and performers must be treated on an equal footing with authors, the United Kingdom is not entitled to exclude the right to claim equitable remuneration when a broadcast or cable programme containing a recording is seen or heard by a non-paying audience as set out in paragraph 18 of Schedule 2 of the 1988 Copyright, Designs and Patents Act.

In the view of the Commission, the criterion of a non-paying audience as defined in the aforementioned provision goes much further than the exceptions to the right permitted under Article 10 of the directive.

Therefore, the Commission submits that by providing for exceptions from the right to equitable remuneration granted to performers where a broadcast or communication to the public of protected subject matter is seen or heard by a non-paying audience, the United Kingdom has failed to fulfil the requirements of Community law and in particular of Article 8(2) of Directive 92/100/EEC.

(<sup>1</sup>) OJ L 346, 27.11.1992, p. 61.

### Action brought on 19 December 2002 by the Commission of the European Communities against the Italian Republic

(Case C-460/02)

(2003/C 55/17)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 19 December 2002 by the Commission of the European Communities, represented by Mikko Huttunen and Antonio Aresu, acting as Agents.

The applicant claims that the Court should :

- (a) Declare that the Italian Republic has failed to fulfil its obligations under Council Directive 96/67/EC<sup>(1)</sup> of 15 October 1996 on access to the groundhandling market at Community airports inasmuch as Legislative Decree No 18 of 13 January 1999

- fails to lay down a maximum period of 7 years for the selection of suppliers of groundhandling services, in accordance with Article 11(1)(d), of the directive in question;
- introduces, by Article 14, a social measure which is not compatible with Article 18 of the directive;
- provides, at Article 20, transitional provisions not permissible under the directive;

- (b) order the Italian Republic to pay the costs.

#### *Pleas in law and main arguments*

Article 11 of Legislative Decree No 18 of 13 January 1999 does not lay down the maximum period for which suppliers of services are selected at airports in which access to the market is by means of a selection procedure. Article 11(1)(d) of Directive 96/67/EC expressly provides that the maximum period is fixed at 7 years. The Commission therefore takes the view that the absence of a limit to the duration of groundhandling contracts at Italian airports is incompatible with the requirements laid down by the directive.

Article 18 of Directive 96/67/EC allows Member States to take the necessary measures to ensure protection of the rights of workers. However, such measures must not affect the application of the directive itself and must not obstruct other provisions of Community law. In other words, the protection of the rights of workers is indeed permissible under Article 18 of the directive provided that it does not run counter to the effective application of the directive so far as concerns groundhandling services. Article 14(1) of Legislative Decree No 18/99 lays down the objective of adopting measures to protect the number of posts of staff working for the previous service supplier and continuing employment. The second paragraph of the article in question thus contains the obligation to transfer staff any time there is a 'transfer of business' affecting one or more categories of groundhandling services under Annex A and B. Such a provision manifestly exceeds the protection already guaranteed by Council Directive 77/187/EEC of 14 February 1977<sup>(2)</sup> on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses, as amended by Council Directive 98/50/EC<sup>(3)</sup> and codified by Council Directive 2001/23/EC<sup>(4)</sup> of 12 March 2001. Accordingly, the Commission takes the view that Article 14 of Legislative Decree No 18/99 goes beyond what may be considered to be permissible measures to guarantee the protection of the rights of workers under Article 18 of Directive 96/67/EC.

Article 20 of Legislative Decree No 18/99 relates to contracts of employment under various organisational arrangements or contractual conditions in force on 19 November 1998. Such contracts concern staff working for users which carry out self-handling services, which are different from those defined in the directive. Those contracts remain in force and unchanged until expiry; however, they may not be for longer than 6 years. In actual fact, undertakings with 'various organisational arrangements' are in practice authorised to act as self-handling operators alongside other self-handling operators and service suppliers.

The directive provides a clear definition for groundhandling services operators — groundhandling for third parties and users which carry out self-handling operations. Entities which do not fulfil the 'self-handling' criteria laid down in Article 2(f) may only operate groundhandling services for third parties. Furthermore, Article 7(2) and Article 11(2) of the directive lay down the specific procedures to follow when appointing self-handling operators and suppliers of groundhandling services for third parties. In light of the foregoing considerations, Article 20 appears to infringe those obligations.

(<sup>1</sup>) OJ 1996 L 272, p. 36.

(<sup>2</sup>) OJ 1977 L 61, p. 26.

(<sup>3</sup>) OJ 1998 L 201, p. 88.

(<sup>4</sup>) OJ 2001 L 82, p. 16.

**Action brought on 23 December 2002 by Commission of the European Communities against the Kingdom of Sweden**

**(Case C-463/02)**

(2003/C 55/18)

An action against the Kingdom of Sweden was brought before the Court of Justice of the European Communities on 23 December 2002 by the Commission of the European Communities, represented by E. Traversa and K. Simonsson, acting as Agents, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. Declare that, by failing to levy value added tax on the amount of aid paid under Council Regulation (EC) No 603/95<sup>(1)</sup> of 21 February 1995 on the common organisation of the market in dried fodder, Sweden has

failed to fulfil its obligations under Article 11 of the Sixth Council Directive 77/388/EC<sup>(2)</sup> of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment; and

2. Order Sweden to pay the costs.

*Pleas in law and main arguments*

The three conditions for inclusion of a subsidy in the taxable amount are satisfied. It is clear from Regulation No 603/95 that only the undertaking which processes fresh fodder can be granted aid and not producers of fresh fodder, and that the processing undertaking both enters into a sales agreement with undertakings which consume dried fodder (supply of goods) and processing agreements with producers of fresh fodder (supply of services). In the present case there is no doubt that the intervention body which pays the aid in accordance with Regulation No 603/95 is a third person in relation to the processing undertaking and the buyer and that this intervention takes place in accordance with a procedure for the award of public subsidies.

Article 11 A point 1(a) of the Sixth Directive would be interpreted excessively narrowly if only types of aid which are calculated on the basis of the product price are included in the taxable amount for VAT. By its general reference to 'subsidies directly linked to the price of [the taxable] supplies', the Community legislature actually intended to include in the taxable amount for VAT all aid which is directly linked to the price of the goods or services, ie the subsidies which directly influence the size of the supplier's remuneration. Those subsidies must, in turn, be directly linked to or have a causal connection with precisely indicated or quantifiable supplies of goods or services, ie the aid paid, if and to the extent that the goods or services are actually sold on the market. That is why the subsidy has a direct influence on the product's sale price and that clearly shows the underlying idea that subsidies should be included in the taxable amount for VAT, on the basis of a non-restrictive interpretation of Article 11 A point 1(a) of the Sixth Directive and in accordance with the general purpose of the article, namely taxation of all the remuneration paid in whole or in part by a person, no matter who, and which is actually received by the supplier as a consequence of the sale of the goods or services.

(<sup>1</sup>) OJ L 63, 21.3.1995, p. 1.

(<sup>2</sup>) OJ L 145, 13.6.1977, p. 1.