



General Court of the European Union

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Judgments in Case T-392/08 AEPI v Commission, Case T-398/08 Stowarzyszenie Autorów ZAiKS v Commission, Case T-401/08 Säveltäjän Tekijänoikeustoimisto Teosto ry v Commission, Case T-410/08 GEMA v Commission, Case T- 411/08 Artisjus v Commission, Case T-413/08 SOZA v Commission, Case T-414/08 Autortiesību un komunikēšanās konsultāciju aģentūra/Latvijas Autoru apvienība v Commission, Case T-415/08 Irish Music Rights Organisation Ltd v Commission, Case T-416/08 Eesti Autorite Ühing v Commission, Case T-417/08 Sociedade Portuguesa de Autores v Commission, Case T-418/08 OSA v Commission, Case T-419/08 LATGA-A v Commission, Case T-420/08 SAZAS v Commission, Case T-421/08 Performing Right Society v Commission, Case T-422/08 SACEM v Commission, Case T-425/08 Koda v Commission, Case T-428/08 STEF v Commission, Case T-432/08 AKM v Commission, Case T-433/08 SIAE v Commission, Case T-434/08 Tono v Commission, Case T-442/08 CISAC v Commission, Case T-451/08 Stim v Commission

Press and Information

The General Court partially annuls the Commission decision finding anti-competitive conduct on the part of copyright collecting societies

The International Confederation of Societies of Authors and Composers (CISAC) is a non-profit non-governmental organisation which represents, in over a hundred countries, collecting societies managing copyright relating to, inter alia, musical works.

The collecting societies acquire the management of those rights either by direct transfer from the authors or by transmission from another collecting society managing the same categories of rights in another country. They grant exploitation licences to commercial users, such as broadcasting undertakings or organisers of live shows. The prices of those licences are the source of the royalties that the authors receive, after the management expenses of those collecting societies have been deducted.

In 1936, CISAC drew up a model contract for reciprocal representation agreements between its members. That contract serves as a non-binding model for reciprocal representation agreements concluded between its members for the purposes of conferring licences covering public performance rights of musical works. Each collecting society agrees, reciprocally, to confer the rights over its repertoire to all of the other collecting societies for the purposes of their exploitation in the respective territories of those collecting societies. Because of the network created by all of those reciprocal representation agreements, each collecting society can propose a worldwide portfolio of musical works to commercial users, but only for use in its own territory.

In 2000, RTL lodged a complaint with the Commission against a member of CISAC concerning its refusal to grant it a Community-wide licence for its music broadcasting activities. In 2003, Music Choice Europe, which provides radio and television broadcasting services on the internet, lodged a second complaint against CISAC concerning its model contract.

By its decision of 16 July 2008¹, the Commission prohibited 24 European collecting societies² from restricting competition, in particular by limiting their ability to offer their services to authors and commercial users outside their domestic territory. The Commission decision, which concerns solely the exploitation of copyright via the internet, satellite and cable retransmission, does not call into question the very existence of reciprocal representation agreements. It does, however, prohibit:

- *membership clauses*: clauses in the model contract which restrict authors' ability to affiliate freely to the collecting society of their choice;

- *exclusivity clauses*: clauses in the model contract which have the effect of providing all collecting societies, in the territory in which they are established, with absolute territorial protection vis-à-vis other collecting societies as regards the grant of licences to commercial users;

- *a concerted practice* which was found to exist between the collecting societies and by which each collecting society limits, in the reciprocal representation agreements, the right to grant licences relating to its repertoire in the territory of another collecting society party to the agreement.

The Commission did not impose fines on the collecting societies but did require that they remove the clauses in question from the model contract and bring an end to the concerted practice.

Most of the collecting societies concerned and CISAC brought an action before the General Court of the European Union against the Commission's decision.

By today's judgments, **the General Court annuls, for CISAC and for 20 of the collecting societies concerned, the Commission's decision in respect of the finding of the concerted practice.** In that respect, the General Court considers that the Commission has not provided sufficient evidence. The Commission, first, did not have documents proving the existence of concertation between the collecting societies as regards the territorial scope of the mandates which they grant each other and, secondly, did not render implausible the applicants' explanation that the parallel conduct of the collecting societies at issue was not the result of concertation, but rather of the need to fight effectively against the unauthorised use of musical works.

The General Court rejected the applications in so far as they sought the annulment of the Commission decision in respect of the membership and exclusivity clauses.

As regards the Stim case, the General Court rejected all of the arguments put forward by that collecting society, which had not raised in sufficient time the issue of the lack of proof of the concerted practice.

Case No.	Collecting society	Nationality of the collecting society	Outcome
T-392/08	AEPI	Greece	Partial annulment of the Commission decision (concerted practice)
T-398/08	ZAIKS	Poland	Partial annulment of the Commission decision (concerted practice)
T-401/08	TEOSTO	Finland	Partial annulment of the Commission decision

¹ Commission Decision relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 – CISAC).

² See the table below.

			(concerted practice)
T-410/08	GEMA	Germany	Partial annulment of the Commission decision (concerted practice)
T-411/08	ARTISJUS	Hungary	Partial annulment of the Commission decision (concerted practice)
T-413/08	SOZA	Slovakia	Partial annulment of the Commission decision (concerted practice)
T-414/08	AKKA/LAA	Latvia	Partial annulment of the Commission decision (concerted practice)
T-415/08	IMRO	Ireland	Partial annulment of the Commission decision (concerted practice)
T-416/08	EAÜ	Estonia	Partial annulment of the Commission decision (concerted practice)
T-417/08	SPA	Portugal	Partial annulment of the Commission decision (concerted practice)
T-418/08	OSA	Czech Republic	Partial annulment of the Commission decision (concerted practice)
T-419/08	LATGA-A	Lithuania	Partial annulment of the Commission decision (concerted practice)
T-420/08	SAZAS	Slovenia	Partial annulment of the Commission decision (concerted practice)
T-421/08	PRS	United Kingdom	Partial annulment of the Commission decision (concerted practice)
T-422/08	SACEM	France	Partial annulment of the Commission decision (concerted practice)
T-425/08	KODA	Denmark	Partial annulment of the Commission decision (concerted practice)
T-428/08	STEF	Iceland	Partial annulment of the Commission decision (concerted practice)
T-432/08	AKM	Austria	Partial annulment of the Commission decision (concerted practice)
T-433/08	SIAE	Italy	Partial annulment of the Commission decision (concerted practice)
T-434/08	TONO	Norway	Partial annulment of the Commission decision (concerted practice)
T-451/08	STIM	Sweden	Action dismissed
T-442/08	CISAC		Partial annulment of the Commission decision (concerted practice)

Collecting societies which are not (or are no longer) applicants

T-456/08	SGAE	Spain	(Action inadmissible because it was not lodged in time) ³
	SABAM	Belgium	No action
	BUMA	Netherlands	No action

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery

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³ Order of the General Court in Case [T-456/08](#) SGAE v Commission.
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