JUDGMENT OF THE COURT OF FIRST INSTANCE
(Eighth Chamber, Extended Composition)

11 June 2009 *

In Case T-292/02,

Confederazione Nazionale dei Servizi (Confservizi), established in Rome (Italy), represented by C. Tessarolo, A. Vianello, S. Gobbato and F. Spitaleri, lawyers,

applicant,

v

Commission of the European Communities, represented by V. Di Bucci, acting as Agent,

defendant,

* Language of the case: Italian.

supported by

Associazione Nazionale fra gli Industriali degli Acquedotti — Anfida, established in Rome (Italy), represented by P. Alberti, lawyer,

intervener,

APPLICATION for annulment of Articles 2 and 3 of Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Eighth Chamber, Extended Composition),

composed of M.E. Martins Ribeiro, President, D. Šváby, S. Papasavvas, N. Wahl (Rapporteur) and A. Dittrich, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 April 2008,

gives the following

Judgment

Background to the dispute

1 The applicant, the Confederazione Nazionale dei Servizi (Confservizi), formerly known as Cispel, is a confederation of public and private undertakings and entities operating in the local public services sector. In accordance with its articles of association, its functions include, in particular, the representation, promotion and protection of those undertakings and entities. It is responsible, inter alia, for negotiating the national collective labour agreement on behalf of the managers of local public services undertakings.

National legal context

2 Legge n. 142 ordinamento delle autonomie locali (Law No 142 on the organisation of local authorities of 8 June 1990, GURI No 135 of 12 June 1990) ('Law No 142/90') brought about a reform in Italy of the legal arrangements available to municipalities for the management of public services, in particular in the water, gas and electricity distribution sectors and in the transport sector. Under Article 22 of that law, as amended, municipalities can set up companies in a variety of legal forms to provide public services. Those include joint stock companies and limited liability companies with a majority public shareholding ('companies set up under Law No 142/90').

3 In that context, under Article 9a of legge n. 488 di conversione in legge, con modificazioni, del decreto legge 1° luglio 1986, n. 318, recante provvedimenti urgenti per la finanza locale (Law No 488 of 9 August 1986 converting and amending Decree-Law No 318 of 1 July 1986 and introducing urgent provisions for financing local authorities, GURI No 190 of 18 August 1986), loans were granted between 1994 and 1998 at a preferential rate of interest by the Cassa Depositi e Prestiti ('the CDDPP') to companies set up under Law No 142/90 providing public services ('the CDDPP loans').

4 Moreover, under Article 3(69) and (70) of legge n. 549 (su) misure di razionalizzazione della finanza pubblica (Law No 549 on measures to rationalise public finances of 28 December 1995, Ordinary Supplement to GURI No 302 of 29 December 1995) ('Law No 549/95'), in conjunction with decreto legge n. 331 (su) armonizzazione delle disposizioni in materia di imposte sugli oli minerali, sull'alcole, sulle bevande alcoliche, sui tabacchi lavorati e in materia di IVA con quelle recate da direttive CEE e modificazioni conseguenti a detta armonizzazione, nonché disposizioni concernenti la disciplina dei centri autorizzati di assistenza fiscale, le procedure dei rimborsi di imposta, l'esclusione dall'ILOR dei redditi di impresa fino all'ammontare corrispondente al contributo diretto lavorativo, l'istituzione per il 1993 di un'imposta erariale straordinaria su taluni beni ed altre disposizioni tributarie (Decree-Law No 331 harmonising tax provisions in various fields of 30 August 1993, GURI No 203 of 30 August 1993) ('Decree-Law No 331/93'), the following measures were introduced for the benefit of companies set up under Law No 142/90:

— exemption from all transfer taxes in connection with the conversion of special and municipal undertakings into companies set up under Law No 142/90 ('the transfer tax exemption');

— a three-year income tax exemption, namely in respect of the tax on the incomes of legal persons and local income tax, up to the tax year 1999 ('the three-year income tax exemption').

Administrative procedure

5 After receiving a complaint concerning those measures, the Commission asked the Italian authorities for information in that regard by letters of 12 May, 16 June and 21 November 1997.

6 By letter of 17 December 1997, the Italian authorities provided some of the information requested. A meeting was then held at the request of the Italian authorities on 19 January 1998.

7 By letter of 17 May 1999, the Commission informed the Italian authorities that it had decided to initiate the procedure laid down in Article 88(2) EC. That decision was published in the *Official Journal of the European Communities* (OJ 1999 C 220, p. 14).

8 After receiving comments from interested parties and the Italian authorities, the Commission asked the latter for additional information on a number of occasions. Meetings were also held between the Commission and, respectively, the Italian authorities and the interested parties involved.

9 Certain companies set up under Law No 142/90, including ACEA SpA, AEM SpA and Azienda Mediterranea Gas e Acqua SpA (AMGA), which also instigated proceedings for the annulment of the decision at issue in this case (Cases T-297/02, T-301/02 and T-300/02 respectively), argued in particular that the three types of measure in question did not constitute State aid.

10 The Italian authorities and the applicant essentially supported that position.

11 On the other hand, the Bundesverband der deutschen Industrie eV (BDI), a German association for industry and suppliers of related services, was of the view that the measures in question could bring about distortions of competition not only in Italy but also in Germany.

12 Similarly, Gas-it, an Italian association of private operators in the gas distribution sector, stated that the measures in question, in particular the three-year income tax exemption, constituted State aid.

13 On 5 June 2002, the Commission adopted Decision 2003/193/EC on State aid granted by Italy in the form of tax exemptions and subsidised loans to companies set up under Law No 142/90 (OJ 2003 L 77, p. 21) ('the contested decision').

The contested decision

14 The Commission points out, first of all, that its analysis concerns only the aid schemes of general application introduced by the contested measures and not individual grants of aid to particular undertakings and its analysis in the contested decision is therefore general and abstract. It states that the Italian Republic 'did not grant the tax advantages on an individual basis or notify any individual cases to [it], together with all the information necessary for the Commission to assess it'. The Commission states that it therefore considered itself bound to carry out a general and abstract examination of the schemes in question in order to determine both whether they constituted State aid and whether such aid was compatible with the common market (recitals 42 to 45 in the preamble to the contested decision).

15 According to the Commission, the CDDPP loans and the three-year income tax exemption (together, 'the contested measures') are State aid. The effect of such advantages being conferred through State resources on companies set up under Law

No 142/90 is to strengthen their competitive position by comparison with that of all other undertakings wishing to supply the same services (recitals 48 to 75 in the preamble to the contested decision). The contested measures are incompatible with the common market because they meet the requirements of neither Article 87(2) and (3) EC nor Article 86(2) EC and, furthermore, infringe Article 43 EC (recitals 94 to 122 in the preamble to the contested decision).

16 On the other hand, according to the Commission, the transfer tax exemption does not constitute State aid within the meaning of Article 87(1) EC, since such taxes are payable on the creation of a new economic entity or the transfer of assets between different economic entities. Municipal undertakings and the companies set up under Law No 142/90 are, substantially, the same economic entities. Exemption from those taxes for such companies is therefore justified by the nature or general scheme of the system (recitals 76 to 81 in the preamble to the contested decision).

17 The enacting terms of the contested decision are worded as follows:

'*Article 1*

The exemption from transfer tax … does not constitute aid within the meaning of Article 87(1) [EC].

Article 2

The three-year exemption from income tax … and the advantages resulting from [CDDPP] loans constitute State aid within the meaning of Article 87(1) [EC].

Such aid is incompatible with the common market.

Article 3

Italy shall take all necessary measures to recover from the beneficiaries the aid granted under the schemes referred to in Article 2 and unlawfully made available to the beneficiaries.

Recovery shall be effected without delay and in accordance with the procedures of national law provided that they allow the immediate and effective execution of the [contested] decision.

The aid to be recovered shall include interest from the date on which it was at the disposal of the beneficiaries until the date of its recovery. Interest shall be calculated on the basis of the reference rate used for calculating the grant equivalent of regional aid.

…'

Procedure and forms of order sought by the parties

18 By application lodged at the Registry of the Court of First Instance on 27 September 2002, the applicant brought the present action.

19 By document lodged at the Registry of the Court of First Instance on 20 December 2002, the Associazione Nazionale fra gli Industriali degli Acquedotti — Anfida applied for leave to intervene in the proceedings in support of the form of order sought by the Commission. By order of 12 May 2003, the President of the Fifth Chamber, Extended Composition, of the Court of First Instance (former composition) granted that application. The intervener submitted its statement in intervention and the other parties their observations thereon within the prescribed time-limits.

20 By separate document lodged at the Registry of the Court of First Instance on 6 January 2003, the Commission raised a plea of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

21 On 28 February 2003, the applicant submitted its observations on the plea of inadmissibility.

22 On 8 August 2002, the Italian Republic also brought an action for annulment of the contested decision before the Court of Justice, which was registered as Case C-290/02. The Court of Justice considered that that action and those in Cases T-292/02, T-297/02, T-300/02, T-301/02 and T-309/02 concerned the same subject-matter, namely the annulment of the contested decision, and were connected, since the pleas put forward in each of the cases overlapped to a very large extent. By order of 10 June 2003, the Court of Justice stayed the proceedings in Case C-290/02, in accordance with the third

paragraph of Article 54 of its Statute, pending the final decision of the Court of First Instance in Cases T-292/02, T-297/02, T-300/02, T-301/02 and T-309/02.

23 By order of 8 June 2004, the Court of Justice decided to refer Case C-290/02 to the Court of First Instance, upon which jurisdiction has been conferred to adjudicate on actions brought by Member States against the Commission, in accordance with Article 2 of Council Decision 2004/407/EC, Euratom of 26 April 2004 amending Articles 51 and 54 of the Protocol on the Statute of the Court of Justice (OJ 2004 L 132, p. 5). That case was thus registered at the Registry of the Court of First Instance under reference T-222/04.

24 By order of 5 August 2004, the Court of First Instance decided to reserve its decision on the plea of inadmissibility raised by the Commission until the judgment in the main proceedings.

25 Upon hearing the report of the Judge-Rapporteur, the Court of First Instance (Eighth Chamber, Extended Composition) decided to open the oral procedure and, by way of measures of organisation of procedure provided for in Article 64 of the Rules of Procedure, put written questions to the parties, to which they replied within the prescribed period.

26 By order of the President of the Eighth Chamber, Extended Composition, of the Court of First Instance of 13 March 2008, Cases T-292/02, T-297/02, T-300/02, T-301/02, T-309/02, T-189/03 and T-222/04 were joined for the purposes of the oral procedure, in accordance with Article 50 of the Rules of Procedure.

27 The parties presented oral argument and replied to the questions put by the Court at the hearing which took place on 16 April 2008.

28 The applicant claims that the Court should:

— declare the action admissible;

— annul Article 2 of the contested decision;

— in the alternative, annul Article 3 of the contested decision, first, in so far as it requires the Italian Republic to recover the aid granted by the contested measures and, second, in so far as it indicates the reference rate to be used for the purpose of calculating interest in the recovery order;

— order the Commission to pay the costs.

29 The Commission, supported by the intervener, contends that the Court should:

— dismiss the action as inadmissible;

— in the alternative, dismiss the action as unfounded;

— order the applicant to pay the costs.

Admissibility

Arguments of the parties

30 As a preliminary point, the Commission maintains that the applicant has no legal interest in bringing proceedings as far as concerns the CDDPP loans. The applicant is a confederation which represents the interests of, inter alia, companies set up under Law No 142/90. In the circumstances, it would be impossible to ascertain whether one or more of its members have actually received such loans, since it has failed to produce a list of such members.

31 Next, the Commission denies that the applicant has *locus standi* on the ground that the contested decision is not of individual concern to it within the meaning of the fourth paragraph of Article 230 EC.

32 As regards the question whether the members of the applicant are individually concerned, the Commission essentially submits, first, that the contested decision is to be regarded as a measure of general application since it concerns an aid scheme and, therefore, an indeterminate and indeterminable number of undertakings defined by reference to a general criterion, such as the fact that they belong to a particular category of undertakings. The general applicability, and thus the legislative nature, of a measure are not called into question by the fact that it is possible to determine more or less exactly the number or even the identity of the persons to whom it applies at any given time, as long as it applies to them by virtue of an objective legal or factual situation defined by the measure in question in relation to its purpose.

33 According to the Commission, in order for a person to be individually affected by a measure of general application, that measure must adversely affect that person's specific rights or the institution which adopted the measure must be under an obligation to take account of the effects of the measure on that person's situation. However, the Commission is of the view that that is not the case here. The contested decision has had an impact on the situation of all the undertakings which benefited from the contested measures. Consequently, the decision has not infringed rights which are specific to certain undertakings that can be distinguished from any other undertaking which benefited from the contested measures. Moreover, in adopting the contested decision, the Commission neither should nor could have taken account of the effects of its decision on the situation of a particular undertaking. Neither the declaration of incompatibility nor the order for recovery in the contested decision referred to the situation of individual beneficiaries.

34 According to the Commission, its analysis is confirmed by the existing case-law on State aid, which establishes that the fact that an undertaking has received State aid that has been declared incompatible with the common market is not sufficient to demonstrate that the undertaking is individually concerned for the purpose of the fourth paragraph of Article 230 EC.

35 A number of more recent cases do not call into question the established case-law. According to the Commission, the approach adopted in Joined Cases C-15/98 and C-105/99 *Italy and Sardegna Lines* v *Commission* [2000] ECR I-8855 ('the judgment in *Sardegna Lines*') cannot be applied to all actions brought by recipients of an aid scheme that has been declared unlawful and incompatible and in respect of which an order for recovery has been made. That is the inevitable conclusion in particular where, as in the present case, the aid scheme in question has been analysed in an abstract manner. Furthermore, in the case which gave rise to the judgment in *Sardegna Lines*, the applicant was an actual beneficiary of individual aid since an advantage was conferred on it by virtue of a measure adopted on the basis of a regional law which allowed for a wide margin of discretion. Moreover, that situation was closely scrutinised in the course of the formal investigation procedure.

36 The facts of the case also differ from those which gave rise to the judgment in Case C-298/00 P *Italy* v *Commission* [2004] ECR I-4087 ('the judgment in *Alzetta*') in so far

as, in the present case, the Commission was unaware of either the exact number or the identity of the beneficiaries of the aid in question, did not have available to it all the relevant information and was unaware of the amount of aid granted in each case. Moreover, in the present case, the three-year income tax exemption applied automatically, whereas the aid in question in the case which gave rise to the judgment in *Alzetta* was granted under a later measure.

37 In any event, neither the fact that it participated in the formal procedure laid down in Article 88(2) EC nor the order for recovery in the contested decision is sufficient, in the Commission's view, to distinguish the applicant individually. Given that actions brought by potential beneficiaries of a notified aid scheme are inadmissible for the purpose of Article 230 EC, the same should apply to actions brought by beneficiaries of an unnotified aid scheme.

38 According to the Commission, nor does the applicant have *locus standi* on its own account to bring proceedings. As a separate entity, the applicant would not have suffered any harm if the contested measures had been withdrawn. Moreover, the fact that it participated in the procedure before the Commission is not sufficient to distinguish the applicant individually within the meaning of Case 25/62 *Plaumann* v *Commission* [1963] 95, 107. Finally, it did not act in the role of negotiator within the meaning of Joined Cases 67/85, 68/85 and 70/85 *Van der Kooy and Others* v *Commission* [1988] ECR 219. The fact that the applicant represents the interests of its members or lobbies on their behalf and participates in negotiations with trade unions is irrelevant. Furthermore, Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC] (OJ 1999 L 83, p. 1) does not confer any special status on associations representing collective interests. The Commission also considers that the case-law which recognises that competitors of aid recipients are individually concerned where it approves aid without instigating the formal investigation procedure is irrelevant to this case. It adds that, when it adopts a decision concerning an aid scheme, it is not required to examine the individual situations of the beneficiaries.

39 Lastly, the Commission maintains that, if the action brought by the applicant in the present case were to be declared inadmissible, that would not infringe the principle of

effective judicial protection, since the remedies provided for in Articles 241 EC and 234 EC would be sufficient (Case C-50/00 P *Unión de Pequeños Agricultores* v *Council* [2002] ECR I-6677) ('the judgment in *UPA*'). The applicant's argument based on the Charter of Fundamental Rights of the European Union, proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1), is not convincing, since the Treaty establishing a Constitution for Europe (OJ 2004 C 310, p. 1) did not alter the conditions for the admissibility of actions brought by private individuals.

40 The intervener essentially supports the Commission's position.

41 The applicant claims that it has an interest in bringing proceedings in so far as concerns the CDDPP loans. It also challenges the part of the contested decision that relates to the CDDPP loans, from which its members benefited.

42 Next, the applicant does not accept the claim that the contested decision is a measure of general application. First of all, the Commission made the scope of the contested decision dependent on the type of aid in question. However, under competition law and under State aid law, a decision that is adopted in relation to a Member State is an individual measure. The case-law relied on by the Commission in support of its claims is irrelevant in so far as it relates to the *locus standi* of individuals to bring proceedings against measures of general application which have a legislative function. In order to determine whether an action brought by a person who is not the addressee of a contested measure is admissible, it is therefore necessary to ascertain the effects of the measure.

43 Second, at the time when the contested decision was adopted, the number of undertakings to which it applied was determined and determinable. The decision caused direct and immediate financial loss to the undertakings which are members of the applicant in that the Commission ordered recovery of the aid which they had actually received. It follows that the legal situation of the applicant's members is

comparable to that of recipients of individual aid and they therefore found themselves in a situation that is analogous to that of the direct addressees of the contested decision.

44 According to the applicant, the actual recipients of aid are individually concerned by a decision where the aid was granted under a general aid scheme that has been declared incompatible and in respect of which the Commission has ordered recovery.

45 Moreover, in support of its claim, the applicant relies on the right to judicial protection. If the present action were found to be admissible, the full and effective judicial protection of individuals would be guaranteed, in accordance with Article 47 of the Charter of Fundamental Rights of the European Union.

46 The applicant takes the view that the contested decision is of individual concern to it within the meaning of the fourth paragraph of Article 230 EC not only because its members are affected but also because it has *locus standi* on its own account to bring proceedings.

47 In that connection, it submits, first, that it acted in the role of negotiator within the meaning of the judgment in *Van der Kooy and Others* v *Commission*, paragraph 38 above. It is, in fact, the sectoral association for undertakings and entities operating local public services in Italy. Its functions consist, inter alia, in representing its members in negotiations with trade unions and representing the interests of those undertakings and entities. Furthermore, it is referred to in a number of legislative provisions as the recognised representative for the purpose of consultations with the public authorities. Accordingly, in 1996, it was engaged in negotiations with the authorities on the text of an agreement coordinating all the basic contractual terms governing the working relationship of senior executives of local public services undertakings in Italy. That agreement also made provision for a body which can arbitrate in the event of termination of a working relationship, some of whose members are appointed by the applicant.

48 Moreover, the applicant refers to the fact that it participated in the administrative procedure before the Commission and to the principle of legal certainty.

49 Finally, in support of its claim that its action is admissible, the applicant relies on Article 1(h) and Article 20 of Regulation No 659/1999.

Findings of the Court

50 According to the fourth paragraph of Article 230 EC, a natural or legal person may institute proceedings against a decision addressed to another person only if that decision is of direct and individual concern to him.

51 It is therefore necessary to determine whether the applicant has *locus standi*.

52 According to case-law, actions brought by associations are admissible in certain situations: where the association represents the interests of undertakings which themselves have *locus standi*; where the association is differentiated by reason of the impact on its own interests as an association, in particular because its position as a negotiator has been affected by the measure of which annulment is sought; and where a legal provision expressly confers on it a number of rights of a procedural nature (order in Case T-170/04 *FederDoc and Others* v *Commission* [2005] ECR II-2503, paragraph 49; see also, to that effect, *Van der Kooy and Others* v *Commission*, paragraph 38 above, paragraphs 21 to 24, and Case C-321/95 P *Greenpeace Council and Others* v *Commission* [1998] ECR I-1651, paragraphs 14 and 29).

53 Concerning the first situation, with regard to the applicant's argument that it represents undertakings which were identifiable at the time when the contested decision was adopted, it must be recalled that the possibility of determining more or less precisely the number or even the identity of the persons to whom a measure applies does not mean that that measure must be regarded as being of individual concern to them, as long as it is established that, as in the present case, that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 52, and order in Case T-108/03 *von Pezold* v *Commission* [2005] ECR II-655, paragraph 46).

54 Next, it should be noted that it is apparent from the judgments in *Sardegna Lines*, paragraph 35 above, and *Alzetta*, paragraph 36 above, that a recipient must be regarded as being individually concerned by a decision which obliges the Member State to recover aid paid to that recipient.

55 Accordingly, it is important to establish whether the applicant actually represents such recipients. It is to be noted that the applicant has failed to show, either in its answer to the written question put by the Court or at the hearing, that its members include beneficiaries of the measures in respect of which recovery has been ordered. Moreover, in the circumstances of the case, it is clear that the applicant has not represented the interests of the applicants in Cases T-297/02, T-300/02, T-301/02, T-309/02 or T-189/03, since the latter are representing their own interests. It must therefore be concluded that the applicant is not in the first situation envisaged at paragraph 52 above.

56 As regards the second situation, although it is true that the existence of special circumstances, such as the fact that an association has participated in a procedure leading to the adoption of a measure within the meaning of Article 230 EC, may provide grounds for the admissibility of an action brought by an association whose members are not individually concerned by the contested measure, in particular because its position as a negotiator has been affected by the measure (see, to that effect, *Van der Kooy and Others* v *Commission*, paragraph 38 above, paragraphs 21 to 24, and the order in *FederDoc and Others* v *Commission*, paragraph 52 above, paragraph 51), it is not

apparent from the documents before the Court that that is the position in the present case.

57 In fact, in the present case, the applicant simply participated in the procedure that is normally initiated for the adoption of domestic legislation as a party that is heard and consulted. The fact that it might have been involved in the negotiations for the national collective agreement for senior executives in the public services sector in question is totally irrelevant in the context of the present proceedings.

58 Furthermore, the fact that the applicant participated at the administrative stage by virtue of Article 1(h) and Article 20 of Regulation No 659/1999 cannot lead to the conclusion that it was affected in its position as negotiator within the meaning of the judgment in *Van der Kooy and Others* v *Commission*, paragraph 38 above. Those provisions do not confer any special status on representative associations by comparison with that conferred on any other interested party. It follows that the applicant is not in the second situation envisaged at paragraph 52 above.

59 Finally, with regard to the third situation, while Article 1(h) and Article 20 of Regulation No 659/1999 confer procedural rights on interested parties, the present action does not seek to safeguard such rights. In fact, the procedure under Article 88(2) EC was initiated and the applicant submitted its comments in that procedure. Accordingly, the mere fact that it may be regarded as being concerned within the meaning of those provisions cannot suffice to render the action admissible (see, to that effect, Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 37). Moreover, the fact that specific tasks and functions may have been conferred on it by Italian law cannot justify any amendment to the system of legal remedies established by Article 230 EC and intended to confer on the Community

judicature jurisdiction to review the legality of acts of the institutions (see, to that effect, the order in *FederDoc and Others* v *Commission*, paragraph 52 above, paragraph 52 and the case-law cited).

60 It follows from the foregoing considerations that the applicant has failed to establish that it is in the third situation envisaged at paragraph 52 above.

61 The applicant's argument based on the requirements of effective judicial protection does not alter that conclusion. First, the Court of Justice confirmed its established case-law on the interpretation of the fourth paragraph of Article 230 EC in its judgment in Case C-263/02 P *Commission* v *Jégo-Quéré* [2004] ECR I-3425 and in its judgment in *UPA*, paragraph 39 above. Second, while the requirement of individual concern laid down by the fourth paragraph of Article 230 EC must be interpreted in the light of the principle of effective judicial protection by ensuring that account is taken of the various circumstances that may distinguish an applicant individually, such an interpretation cannot have the effect of setting aside that requirement (the judgment in *UPA*, paragraph 44).

62 Lastly, the applicant's argument based on Article III-365(4) of the Treaty establishing a Constitution for Europe is invalid, since that provision has not entered into force and, moreover, has been replaced by the Treaty on European Union and the Treaty on the Functioning of the European Union (OJ 2008 C 115, p. 1).

63 It follows from all the foregoing considerations that the contested decision cannot be regarded as being of individual concern to the applicant within the meaning of the fourth paragraph of Article 230 EC and the action must therefore be dismissed in its entirety as inadmissible.

Costs

64 In accordance with Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

65 Under the third subparagraph of Article 87(4) of the Rules of Procedure, the intervener must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Eighth Chamber, Extended Composition)

hereby:

1. Dismisses the action as inadmissible;

2. Orders the Confederazione Nazionale di Servizi (Confservizi) to bear its own costs as well as those incurred by the Commission;

3. Orders the Associazione Nazionale fra gli Industriali degli Acquedotti — Anfida to bear its own costs.

Martins Ribeiro Šváby Papasavvas

Wahl Dittrich

Delivered in open court in Luxembourg on 11 June 2009.

[Signatures]