JUDGMENT OF THE COURT (Sixth Chamber)
27 January 2000 *

In Case C-164/98 P,

DIR International Film Srl, established in Rome (Italy),

Nostradamus Enterprises Ltd, established in London (United Kingdom),

Union PN Srl, established in Rome,

United International Pictures BV, established in Amsterdam (Netherlands),

United International Pictures AB, established in Stockholm (Sweden),

United International Pictures ApS, established in Copenhagen (Denmark),

United International Pictures A/S, established in Oslo (Norway),

United International Pictures EPE, established in Athens (Greece),

United International Pictures OY, established in Helsinki (Finland), and

United International Pictures y Cía SRC, established in Madrid (Spain),

represented by A. Vandencasteele and O. Speltdoorn, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of E. Arendt, 8-10 Rue Mathias Hardt,

appellants,

* Language of the case: English.

APPEAL against against the judgment of the Court of First Instance of the European Communities (First Chamber) of 19 February 1998 in Joined Cases T-369/94 and T-85/95 *DIR International Film and Others* v *Commission* [1998] ECR II-357, seeking to have that judgment set aside,

the other party to the proceedings being:

Commission of the European Communities, represented by K. Banks, of its Legal Service, acting as agent, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

defendant at first instance,

THE COURT (Sixth Chamber),

composed of: R. Schintgen, President of the Second Chamber, acting as President of the Sixth Chamber, G. Hirsch (Rapporteur) and H. Ragnemalm, Judges,

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 6 May 1999,

after hearing the Opinion of the Advocate General at the sitting on 1 July 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 April 1998, DIR International Film Srl, Nostradamus Enterprises Ltd, Union PN Srl, United International Pictures BV, United International Pictures AB, United International Pictures APS, United International Pictures A/S, United International Pictures EPE, United International Pictures OY and United International Pictures y Cía SRC lodged an appeal under Article 49 of the EC Statute of the Court of Justice against the judgment of the Court of First Instance of 19 February 1998 in Joined Cases T-369/94 and T-85/95 *DIR International Film and Others* v *Commission* [1998] ECR II-357, in which, *inter alia*, the latter dismissed their action for the annulment of the decision of the European Film Distribution Office — Europaïsches Filmbüro eV ('EFDO'), notified to the applicants by letter of 10 January 1995, which rejected their application for financing ('the contested decision').

Legal background, facts and procedure

2 The legal context and the facts underlying the dispute are set out in the contested judgment as follows:

'1 On 21 December 1990, the Council adopted Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (MEDIA) (1991 to 1995) (OJ 1990 L 380, p. 37), the name MEDIA being an acronym for "mesures pour encourager le développement de l'industrie audiovisuelle". The decision began by stating that the European Council regarded it as extremely important to strengthen Europe's audiovisual capacity (first recital in the preamble). The Council then stated that it had taken note of the Commission communication accompanied by two proposals for Council decisions relating to an action programme to promote the development of the European audiovisual industry "MEDIA" 1991-1995 [Com(90) 132 final, of 4 May 1990, not published in the *Official Journal of the European Communities*, hereinafter referred to as "the communication on audiovisual policy"] (eighth recital). It stressed the need for the European audiovisual industry to overcome fragmentation of the markets and overhaul its excessively narrow and insufficiently profitable production and distribution structures (fourteenth recital), stating that special attention needed to be given in that context to small and medium-sized undertakings (fifteenth recital).

2 Article 2 of Decision 90/685 sets out the aims of the MEDIA programme as follows:

— to help create a favourable environment within which Community undertakings will act as a driving force alongside those from other European countries,

— to stimulate and increase the competitive supply capacity of European audiovisual products, with special regard for the role and requirements of small and medium-sized undertakings, the legitimate interests of all professionals who play a part in the original creation of such products and the position of countries in Europe with smaller audiovisual production capacities and/or with a limited geographical and linguistic area,

— to step up intra-European exchanges of films and audiovisual programmes and to make maximum use of the various means of distribution which either exist or are still to be set up in Europe, with a view to securing a better return on investment, wider dissemination and greater public impact,

— to increase European production and distribution companies' share of world markets,

— to promote access to and use of the new communications technologies, particularly European ones, in the production and distribution of audiovisual material,

— to encourage an overall approach to the audiovisual industry which allows for the interdependence of its various sectors,

— to ensure that action taken at European level complements that taken at national level,

— to contribute, in particular by improving the economic and commercial management abilities of professionals in the audiovisual industry in the Community, and in conjunction with existing institutions in the Member States, to creating conditions which will enable undertakings in that sector to take full advantage of the single market dimension.

3 The Commission stated in its communication on audiovisual policy (p. 9) that [EFDO], an association registered in Hamburg (Germany), "is helping to set up co-distribution networks by fostering cooperation between companies which were previously operating in isolation on their national territory".

4 Article 7(1) of Decision 90/685 provides that the Commission is to be responsible for implementing the MEDIA programme. Under point 1.1 of

Annex I to Decision 90/685, one of the mechanisms to be used in implementing the MEDIA programme is to develop significantly the action taken by EFDO to promote the cross-frontier distribution of European films in cinemas.

5 Against that background, the Commission concluded agreements with EFDO concerning the financial implementation of the MEDIA programme. A copy of the agreement for 1994 ("the 1994 Agreement"), which is relevant in this case, has been placed with the documents before the Court.

6 Article 3(2) of that agreement refers to the rules on cooperation, which form an integral part of the agreement and are set out in Annex 3 thereto. Those rules have also been placed by the Commission with the documents before the Court. They provide in particular that the prior approval of the Commission's representatives is to be obtained in relation to all matters having an impact on the implementation of the MEDIA programme, particularly where, "in general terms, any negotiations likely to affect relations between the Commission and the political authorities and/or professional organisations" are concerned (paragraph 1(g)).

7 The functioning of EFDO is also subject to guidelines adopted by itself and approved, in a manner which has not been defined, by the Commission. The version of those guidelines of 15 February 1994 has also been placed before the Court. Under those guidelines, EFDO administers a fund which grants loans to film distributors of up to 50% of anticipated distribution costs, without interest, and repayable only if the film recoups the anticipated costs in the country for which the loan is granted. The loan serves to reduce the risk in distributing films and helps to ensure the release of films which, without such financing, would have little chance of being shown in cinemas. Decisions on loan applications are taken by the EFDO Selection Committee.

12 Finally, under point VI.3 of the guidelines EFDO has the right to reject an application without stating reasons if it has knowledge, directly or indirectly, of any fact giving reason to believe that the loan will not or cannot be duly repaid.

13 The first and third applicants, DIR International Film S.r.l. and Union PN S.r.l., are producers of the Italian film *Maniaci Sentimentali*, and the second applicant, Nostradamus Enterprises Ltd, is the producer of the film *Nostradamus*, an Anglo-German co-production. The fourth applicant, United International Pictures BV ("UIP"), a joint subsidiary of the American company Paramount Communications Inc., the Japanese company MCA Inc. and the French company Metro-Goldwyn-Mayer Inc., which were equal shareholders at the time the actions were brought, is involved primarily in the distribution of full-length films around the world, with the exception of the United States, Puerto Rico and Canada. (...) United International Pictures AB (Sweden), United International Pictures APS (Denmark), United International Pictures A/S (Norway), United International Pictures EPE (Greece), United International Pictures OY (Finland), and United International Pictures y Cía SRC (Spain), are subsidiaries of UIP and act as local distributors in the respective countries (and are hereinafter referred to as "the subsidiaries").

14 On 28 July 1994, at the request of the producers of the film *Maniaci Sentimentali*, UIP sent EFDO funding applications for the distribution of that film by its respective subsidiaries in Norway, Finland, Sweden, Denmark, Greece and Spain (and on behalf of Filmes Lusomundo SARL, a company unconnected with UIP, in Portugal).

15 On the same date, at the request of the producer of the film *Nostradamus*, UIP sent a funding application to EFDO for the distribution of that film in Norway, Finland, Sweden and Denmark by its respective subsidiaries.

16 The correspondence between EFDO and the Commission, placed before the Court at its request, shows that in a fax of 7 September 1994 the Commission stated that EFDO should not take a decision on the funding applications by the UIP subsidiaries until the Commission had given its ruling on UIP's application for renewal of its exemption. By a further fax the same day, the Commission again asked EFDO "not to rule on those candidatures [that day], but to keep them in suspense pending the Commission's final decision on the UIP file that it [was] investigating" at the time.

17 On 12 September 1994, the UIP subsidiaries received fax letters from EFDO ("the disputed letters"), stating that "[t]he Committee of EFDO [had] postponed the decision on [their] application concerning the films *Nostradamus* and *Maniaci Sentimentali* [...] until the European Commission [had] taken its general decision upon the status of UIP in Europe". The general decision referred to, according to the parties, was the decision to be taken by the Commission concerning UIP's application for the renewal of its exemption under Article 85(3) of the EC Treaty for the joint venture agreement between its three parent companies providing for its establishment and for related agreements concerning primarily the production and distribution of full-length feature films. The exemption granted by Commission Decision 89/467/EEC of 12 July 1989 relating to a proceeding pursuant to Article 85 of the EEC Treaty (IV/30.566 — UIP) (OJ 1989 L 226, p. 25; "Decision 89/467") expired on 26 July 1993.

18 Following receipt of the disputed letters, the first four applicants contacted EFDO and Commission representatives in order to signify their disagreement and obtain certain information and documents, and to have the applications re-examined. UIP's representatives also contacted the Member of the Commission with responsibility for (*inter alia*) cultural affairs, João de Deus Pinheiro, requesting him to intervene so that the applications could be reconsidered. Having been informed that the file had been transferred to the Directorate-General for Competition, UIP's counsel also wrote to the Member of the Commission with responsibility for competition matters, Karel Van Miert, asking him for certain information. The latter emphasised in his reply that there was no link between the procedure concerning UIP's application for the renewal of its exemption under Article 85(3) of the Treaty and the procedure concerning the grant of subsidies by EFDO. The

Commission explained at the hearing that all that statement by Mr Van Miert meant was that UIP could in no circumstances rely on an EFDO decision granting it a loan in support of its application for renewal of its exemption.

19 Those contacts having failed to produce the desired result, the applicants brought an action on 16 November 1994 challenging the disputed letters.

20 On 5 December 1994, the EFDO Committee, "following representations by UIP", examined the funding applications referred to above and decided to reject them. That decision was notified to UIP by a letter from EFDO dated 10 January 1995 ("the contested decision").

21 The correspondence between EFDO and the Commission, produced by the Commission at the Court's request, shows that, on an unspecified date, the Commission recommended to EFDO that it reject the applications as ineligible on the ground that many subsidiaries of the same distribution company did not constitute "different distributors" within the meaning of the EFDO guidelines.

22 According to the contested decision, drafted by EFDO staff, the applications were rejected because "it has not yet been decided by the Commission of the European Union what UIP's status will be in Europe in the future. Since EFDO's loan contracts are based on a five-year period of theatrical release for the supported films, no other decision could be made in order not to interfere with the legal proceedings instituted by UIP against the Commission of the European Union. In addition to that, the Committee of EFDO thinks that UIP

does not fully fulfil the aims of the MEDIA programme as described below: '[...] to set up co-distribution networks by fostering cooperation between companies which were previously operating in isolation on their national territory' (Action programme to promote the development of the European audiovisual industry 'MEDIA' 1991-1995)".'

3 On 16 March 1995, the applicants brought an action for the annulment of the contested decision.

4 They relied on three pleas in law in support of their action before the Court of First Instance. In the first, they alleged infringement of the selection criteria laid down in the EFDO guidelines, arguing that their funding applications fully satisfied the conditions laid down in those guidelines and that EFDO had no discretionary power to reject them. In their second plea, they maintained that the contested decision was contrary to the philosophy and aims of the MEDIA programme and thereby infringed Decision 90/685. Preventing a distributor from benefiting from EFDO assistance on the ground that the Commission had not yet decided whether or not to renew an exemption granted under Article 85(3) of the EC Treaty (now Article 81(3) EC) would make film distribution in Europe less effective. In their third plea, the applicants alleged that the statement of reasons in the contested decision was insufficient. They argued that neither EFDO's concern not to interfere with the legal proceedings instituted by UIP against the Commission pursuant to Article 85 of the Treaty, nor the statement that the objective of the MEDIA programme was to create co-distribution networks by fostering cooperation between companies which were previously operating in isolation on their national territory could constitute adequate, clear and relevant reasoning for the purposes of Article 190 of the EC Treaty (now Article 253 EC).

The contested judgment

5 In the contested judgment, the Court of First Instance ruled that there was no need to adjudicate in Case T-369/94, dismissed the application in Case T-85/95 and ordered the applicants to bear all the costs.

6 The Court of First Instance began by finding, in paragraphs 52 and 53 of the judgment, that EFDO's decisions on funding applications submitted under the MEDIA programme were imputable to the Commission because the Commission was responsible for implementing that programme under Article 7(1) of Decision 90/685, because the judgment in Case 9/56 *Meroni* v *High Authority* [1957 and 1958] ECR 133 showed that delegation of powers coupled with a freedom to make assessments implying a wide discretionary power was not permissible, and because all EFDO's decisions were subject to the prior agreement of the Commission.

7 The Court of First Instance then held, in paragraph 91 of the contested judgment, that the Commission and EFDO did not exceed their discretionary power in taking the view that the grant of Community funds for the distribution of films had to foster the creation in Europe of distribution networks which did not exist before. It therefore held, in paragraph 94 of the judgment, that the Commission and EFDO were entitled to require that, for funding applications in respect of film distribution under the MEDIA programme to be eligible, they be submitted by at least three distributors who had not previously cooperated in a substantial and permanent manner.

8 The Court of First Instance also held, in paragraph 100 of the contested judgment, that, regarding distribution of the film *Nostradamus*, the conditions laid down in the guidelines were complied with. However, in paragraph 101 of the judgment, it held that, even though the Commission stated in the course of the proceedings that UIP's involvement in an exemption renewal proceeding under

Article 85(3) of the Treaty had not in itself led EFDO to reject the applications, and that it was uncertainty as to the ability of the UIP subsidiaries to make the necessary repayments, linked to UIP's uncertain status, which had justified the rejection, it was indeed the uncertain status of UIP and its subsidiaries that lay at the root of the rejection of the loan applications, such uncertainty arising from the existence of a proceeding under Article 85(3) of the Treaty.

9 The Court of First Instance finally held, in paragraph 122 of the contested judgment, that the statement of reasons for the contested decision had to be regarded as sufficient.

The appeal

10 The appellants rely on three grounds of appeal.

11 First, they submit that the Court of First Instance erred in law in holding that the Commission enjoyed a discretionary power to assess the eligibility of EFDO funding applications.

12 Secondly, they submit that the Court of First Instance infringed Article 173 of the EC Treaty (now, after amendment, Article 230 EC) and Article 190 of the Treaty by substituting its own reasoning for that which the Commission used to justify its decision regarding the financing of the film *Nostradamus*.

13 Thirdly, they maintain that the reasoning of the Court of First Instance, namely that structures which are potentially incompatible with the competition rules and do not benefit from an exemption decision are only in an 'uncertain' and 'very precarious' legal position and hence cannot be supported financially, is in any event irreconcilable with Council Regulation No 17 of 6 February 1962: First Regulation implementing Articles 85 and 86 of the Treaty (OJ, English Special Edition 1959-1962, p. 87).

14 The Commission contends that the Court should dismiss the appeal as unfounded.

The first ground of appeal

15 The appellants first call attention to paragraph 82 of the contested judgment, which states: '[I]t is common ground that the EFDO guidelines were approved by the Commission as part of the implementation of the MEDIA programme governed by Decision 90/685. Having regard to their place in the system of the MEDIA programme, and to the fact that the Commission, which relies on their rules in order to justify the contested decision, regards them as having binding force and being a source of law in the implementation of that programme, the EFDO guidelines, like Decision 90/685, are rules of law that the Community judicature must enforce.'

16 In the appellants' submission, those guidelines exhaustively list the conditions for receipt of EFDO funding and provide that funding applications which are otherwise eligible may be rejected only if EFDO comes to know of any facts, directly or indirectly, from which it can be suspected that the loan will not or cannot be duly repaid.

17 The Court of First Instance was therefore not entitled to conclude that the Commission had a discretionary power allowing it, first, to rule that, in order to benefit from EFDO funding, applications had to be submitted by at least three distributors who had not previously cooperated in a substantial and permanent manner, that condition not having been laid down by the guidelines, and, secondly, to reject eligible applications emanating from structures that were incompatible with the competition rules.

18 The Commission considers that the first plea falls into two parts.

19 In relation to the first part, concerning the participation of three distributors who had not previously cooperated in a substantial and permanent manner, the Commission contends that the applicants have not put forward any argument in support of their objection.

20 In relation to the second part, the Commission maintains that, in ruling that the Commission was entitled to refuse to support structures that were potentially incompatible with the competition rules, the Court of First Instance based its judgment on the essential aim of the MEDIA programme, namely to encourage the development of a powerful audiovisual industry.

21 The Commission also points out that the Court of Justice has held that, when applying a provision of Community law, the Commission must also have regard to the correct application of other provisions of the Treaty (Case C-225/91 *Matra* v *Commission* [1993] ECR I-3203, paragraphs 41 and 42). It is true that the grant

of funding to the UIP subsidiaries would not, as a matter of law, have prevented the subsequent adoption of an adverse decision on the application of the three parent companies for exemption, pursuant to Article 85(3), of their joint venture agreement. However, as a matter of principle, the Commission must be entitled to avoid inconsistencies that might arise in the implementation of the various provisions of Community law.

22 As regards, first, the application of the eligibility conditions for EFDO funding, it must first be observed that the fact that such conditions exist and were approved by the Commission is not in itself sufficient to exclude all discretionary power on the part of the Commission.

23 It must be determined whether, having regard to the wording of those conditions, the Court of First Instance might legitimately conclude that the Commission had a discretionary power allowing it to require that applications for EFDO funding be submitted by at least three distributors who had not previously cooperated in a substantial and permanent manner.

24 In that regard, it should first be noted that point III.1(a) of the guidelines in force at the material time required that at least three different distributors from at least three different EU countries, or from countries with which cooperation contracts existed, must agree to exhibit a film theatrically and submit their applications by the same deadline.

25 Those guidelines did not contain any definition of the term 'different distributors'.

26 According to consistent case-law, the meaning and scope of terms for which Community law provides no definition must be determined by considering the general context in which they are used and their usual meaning in everyday language (see, in particular, Case 349/85 *Denmark* v *Commission* [1988] ECR 169, paragraph 9).

27 The Court of First Instance therefore properly held that the Commission was entitled to interpret and apply the condition relating to the three different distributors' requirement by reference to the aims of the MEDIA programme as they emerge from the Commission's communication on audiovisual policy and from Decision 90/685 and as they were mentioned in paragraphs 86 to 93 of the contested judgment, and thus to require that, for funding applications for the distribution of films to be eligible, they must be submitted by at least three distributors who did not previously cooperate in a substantial and permanent manner.

28 As regards, secondly, the power to reject funding applications from structures that are potentially incompatible with the competition rules, it should be pointed out that, contrary to what the appellants maintain, the guidelines do not restrict the power to reject eligible funding applications solely to cases in which EFDO learns, directly or indirectly, of any fact giving reason to believe that the loan will not or cannot be duly repaid. All point VI.3 of the guidelines does is to provide that, in such a situation, EFDO may reject applications made to it without giving reasons.

29 Moreover, as the Commission has rightly pointed out, the Court has held that, for reasons of consistency, the Commission cannot authorise State aid at the conclusion of the procedure under Article 93 of the EC Treaty (now Article 88 EC) without verifying that the recipient is not in a position that contravenes Articles 85 and 86 of the EC Treaty (now Articles 81 EC and 82 EC) (see, in particular, *Matra*, paragraph 42).

30 The same rules of consistency require that Community aid should not be granted to a joint venture without an examination of the latter's compatibility with Article 85 of the Treaty.

31 It follows that the first plea must be dismissed as unfounded.

The second plea

32 The appellants submit that in holding that UIP and its subsidiaries could not be regarded as structures which might receive EFDO funding, not by reason of possible uncertainty as to their ability to repay the loans but rather on the ground that, at the time, their legal position was entirely uncertain since an exemption was necessary to authorise an agreement contrary to Article 85(3) of the Treaty, the Court of First Instance substituted its own reasoning for that of the contested act, which it was not entitled to do under Article 173 of the Treaty.

33 The appellants also state that it is clear from the case-law of the Court of Justice that, in imposing upon the Commission the obligation to state reasons for its decisions, Article 190 of the Treaty is not merely taking formal considerations into account, but seeks to give an opportunity to the parties of defending their rights, to the Court of Justice of exercising its supervisory function, and to Member States and all interested nationals of ascertaining the circumstances in which the Commission has applied the Treaty (Case 24/62 *Germany* v *Commission* [1963] ECR 63, 69).

34 The possibility for the addressee of a measure to ascertain the circumstances in which the Commission has applied the Treaty would be meaningless, and his rights of defence would be jeopardised, if it were open to the Community judicature to 'rewrite' those circumstances.

35 For its part, the Commission contends that, far from substituting its own reasoning, the Court of First Instance merely interpreted the contested decision, and thus did not commit any infringement of Article 173 of the Treaty.

36 As for the alleged infringement of Article 190 of the Treaty, the Commission maintains that, having constantly argued against the Commission's interpretation of the contested decision, the appellants cannot claim to have relied on an interpretation subsequently shown to be invalid.

37 In the alternative, the Commission argues that, should the Court nevertheless find that the Court of First Instance erred in law by substituting its own interpretation of the contested decision, that decision should be upheld on the basis of the interpretation given to it by the Commission during the proceedings before the Court of First Instance.

38 In reviewing the legality of acts under Article 173 of the Treaty, the Court of Justice and the Court of First Instance have jurisdiction in actions brought on grounds of lack of competence, infringement of an essential procedural requirement, infringement of the Treaty or of any rule of law relating to its application, or misuse of powers. Article 174 of the EC Treaty (now Article 231 EC) provides that, if the action is well founded, the act concerned must be declared void. The Court of Justice and the Court of First Instance cannot under any circumstances substitute their own reasoning for that of the author of the contested act.

39 In this case, the Court of First Instance held, at paragraph 105 of the contested judgment, that 'the UIP subsidiaries' applications concerning the distribution of the film *Nostradamus*... could be rejected on the ground that, for as long as the Commission had not decided whether or not it would renew the exemption granted to UIP under Article 85(3) of the Treaty, the legal position of that company and its subsidiaries remained uncertain. In particular, the Commission and EFDO were entitled to take the view, in the exercise of their discretionary power, that, by reason of that very precariousness, those companies could not be accepted as structures to be supported, even if they had offered every guarantee of repayment of the loans applied for, particularly in the event of a refusal to renew the exemption'.

40 As may be seen from paragraph 79 of the contested judgment in particular, the Commission indicated during the proceedings before the Court of First Instance that 'UIP's involvement in a proceeding for the renewal of an exemption under Article 85(3) of the Treaty did not in itself lead EFDO to reject the applications'.

41 According to the Commission, the reference to UIP's uncertain status in Europe contained in the contested decision should be understood as referring to its ability or otherwise to repay EFDO loans. Thus paragraph 79 of the contested judgment makes it clear that the Commission justified the refusal of financing on the ground that 'since only UIP's subsidiaries, and not their parent companies, would have been the beneficiaries of EFDO loans, there was uncertainty as to the ability of those UIP subsidiaries to make the repayments if necessary'.

42 Although, in proceedings for annulment, the Court of First Instance may be led to interpret the reasoning of the contested measure in a manner which differs from that of its author, and even, in certain circumstances, to reject the latter's formal statement of reasons, it cannot do so where there is no material factor to justify such a course of action.

43 In this case, the Court of First Instance based its reasoning, in paragraph 101 of the contested judgment, on a quotation from the contested decision, according to which 'the main reason for the rejection of the applications was that the Commission had "not yet [...] decided [...] what UIP's status [would] be in Europe in the future [and that] no other decision could be made in order not to interfere with the [exemption] procedure"'.

44 That quotation appears to be inaccurate.

45 In the exact words of the contested decision, '[...] the Committee of EFDO turned down the applications of UIP for the films *Maniaci Sentimentali* and *Nostradamus* as it has not yet been decided by the Commission of the European Union what UIP's status will be in Europe in the future. Since EFDO's loan contracts are based on a five year period of theatrical release for the supported films, no other decision could be made in order not to interfere with the legal proceedings instituted by UIP against the Commission of the European Union'.

46 The contested decision thus contained no explicit reference to the exemption procedure, but referred instead to legal proceedings brought by UIP against the Commission. The file shows that, on 16 November 1994, actions had been brought by UIP and its subsidiaries against the letters at issue in which EFDO had informed them that it had postponed its decision concerning their application in respect of the films *Nostradamus* and *Maniaci Sentimentali*.

47 In those circumstances, the risk of interference referred to in the contested decision related not to the exemption procedure but to the actions for annulment which were pending before the Court of First Instance.

48 It must therefore be concluded that the content of the contested decision was distorted. It was precisely that distortion which enabled the Court of First Instance to set aside the interpretation put forward by the Commission, which insisted on the link that existed between the uncertain status of UIP in Europe and the risk that loans granted might not be capable of being repaid, even though that interpretation was inherent in the logic of point VI.3 of the guidelines, which, as indicated in paragraph 12 of the contested judgment, provided that applications might be rejected without stating [specific] reasons if EFDO learned that the loan would not or could not be duly repaid.

49 It follows that, by substituting its own reasoning for that set out in the contested decision, the Court of First Instance made an error of law. The second plea must therefore be upheld and the contested judgment set aside.

Reference back to the Court of First Instance

50 Under the first paragraph of Article 54 of the EC Statute of the Court of Justice, if the appeal is well founded, the Court of Justice is to set aside the decision of the Court of First Instance. It may itself give final judgment in the matter, where the state of the proceedings so permits, or refer the case back to the Court of First Instance for judgment. In this case, the Court of Justice has no information enabling it to determine whether there was a risk that the loan which EFDO would have granted for the distribution of the film *Nostradamus* might not have been capable of being repaid. Since the state of the proceedings does not permit the Court to give final judgment, the case must be referred back to the Court of First Instance.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Sets aside points 2 and 3 of the operative part of the judgment of the Court of First Instance of 19 February 1998 in Joined Cases T-369/94 and T-85/95 *DIR International Film and Others* v *Commission*;

2. Refers the case back to the Court of First Instance;

3. Reserves the costs.

Schintgen Hirsch Ragnemalm

Delivered in open court in Luxembourg on 27 January 2000.

R. Grass
Registrar

J.C. Moitinho de Almeida
President of the Sixth Chamber