

**Question for written answer E-003474/2011
to the Commission**

Rule 117

Luigi de Magistris (ALDE)

Subject: Decree-Law 40/2010 - 'ad aziendam' law to protect a specific company (Mondadori) - Italian and EU citizens seriously penalised

Article 3, paragraph 2(a) of Decree-Law No 40 of 25 March 2010, converted into Law No 73 of 22 May 2010, concerning urgent financial and tax provisions to combat fraud, provides for an automatic final judgment at the third instance, by order of the tax court, where the tax authorities have lost their case against a private individual in the two previous sets of proceedings and the case has been pending for more than 10 years, but only as from the date of 26 May 2010. Curiously, as reported by // *Sole 24 Ore* newspaper on 24 August 2010, the Prime Minister's publishing house, Mondadori, will be in a position to benefit from this tax amnesty and thus be eligible for an exceptional tax reduction.

The termination of the proceedings will not, in fact, involve any expense for the private individual in question if the decision is pending before the Central Tax Commission (CTC). If the case is pending before the Supreme Court a mere 5% of the sum that should have been disbursed if the case had been lost will have to be paid.

In converting the decree-law, however, the Italian legislator inexplicably overlooked the instructions given by the EU Court of Justice in the rulings against Italy in Cases C-132/06 and C-174/07 relating to the tax amnesty of 2004 and Case C-255/02 on abuse of law in taxation-related matters, in addition to the technical opinion of the Inland Revenue, which had confirmed the tax authority's interest in proceeding to the third level of appeal for nearly all cases pending before the Central Tax Commission (CTC), apparently believing that it had a considerable chance of success. The CTC (Case C-500/10) therefore asked the EU Court of Justice whether the Italian law was compatible with Article 4 of the EU Treaty and with Articles 2 and 22 of the Sixth VAT Directive (77/388/EEC, now 2006/112/EC), raising the doubt that this law too might constitute a widespread serious failure correctly to implement and collect VAT.

Pending the predictable ruling by the Court of Justice, does the Commission not agree that this careless or deliberate policy of the Italian authorities damages Italian citizens twice, first by depriving them of the revenue which they are due and secondly, by exposing them to possible EU penalties? Does it not also agree that the repeated adoption of such measures damages all EU citizens, given the failure to recover the own resources due under the EU budget and the violation of the principle of tax neutrality?