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Advocate General's Opinion in Case C-415/03

Commission of the European Communities v Hellenic Republic

**ADVOCATE GENERAL LEENDERT A. GEELHOED CONCLUDES THAT
GREECE HAS NOT TAKEN ALL THE MEASURES NECESSARY TO SECURE
REPAYMENT OF THE AID GRANTED TO OLYMPIC AIRWAYS AND DEEMED
TO BE INCOMPATIBLE WITH THE COMMON MARKET**

The transfer, by means of a legislative act, of most of the assets of Olympic Airways to Olympic Airlines prevents recovery of the aid from the company which carried out the economic activities in respect of which the aid was paid.

In 1998 the European Commission approved the aid granted by Greece for the restructuring of the undertaking Olympic Airways (for the period 1998 to 2002).¹ In 2002 it initiated a further procedure on the ground that the restructuring plan had not been applied and that certain conditions envisaged in the decision approving the aid had not been met. As the information supplied by Greece was inadequate, the Commission then found that there had been an infringement, claiming, furthermore, that there was new operating aid.² The Greek State was said to have tolerated non-payment of: social security contributions (IKA); VAT on aircraft fuel and spare parts; rent payable to the airports for the period 1998 to 2001 (EUR 2.46 million); airport charges (EUR 33.9 million) payable to Athens International Airport; and passenger tax payable at all Greek airports (known as the 'Spatosimo', amounting to EUR 61 million). Consequently, the Commission ordered Greece to **recover from the recipient company, without delay and with interest, the second instalment of the restructuring aid** (amounting to EUR 41 million) **and also the new operating aid**, which was granted to the recipient unlawfully.

The Commission was not satisfied by the measures taken by Greece and brought the present action. Meanwhile, Greece published – only 10 days before this action was brought – a law³ entailing **the transfer to the new company 'Olympic Airlines' of the personnel and the**

¹ Decision 1999/332/EC of 14 August 1998 (OJ 1999 L 128, p. 1).

² Decision 2003/372/EC of 11 December 2002 (OJ 2003 L 132, p. 1).

³ Law No 3185/2003, FEKA' 229/26.9.2003.

assets of the former undertaking ‘Olympic Airways’, which, however, retains the essential part of the liabilities.

The Advocate General has delivered his Opinion today. He considers, first of all, that **the recent Greek law creates legal or economic obstacles to the effective implementation of the Commission decision.** That decision has as its objective the recovery of the aid whereby the Greek State unlawfully supported the economic and business activities of Olympic Airways, thus distorting competition in the civil aviation sector.

The Advocate General recalls that, in order to achieve the objective of respect for competition, **the financial consequences of the recovery must be borne by the undertaking which is effectively responsible**, from both an economic and a financial point of view, **for the economic activities which benefited** from the aid. Consequently, **the application of the Greek law could frustrate the effective implementation of the decision.** Recovery of the aid from Olympic Airways could no longer achieve the intended result because that company would no longer have sufficient assets and – even in the unlikely event that Olympic Airways’ assets should still be sufficient to repay the aid – the new company Olympic Airlines would still have all the competitive advantages resulting from the unlawful aid.

The Advocate General then emphasises that **the Greek Government delayed recovery of the second instalment of the aid (EUR 41 million)** and that such inaction cannot be justified merely by a reference to the provisions and mechanisms put in place in the context of national law. On that point, the Advocate General recalls that the Community interest in the proper implementation of decisions ordering the repayment of unlawful aid also means that they are to be implemented promptly in order to avoid a permanent change of the competitive structure.

Last, the Advocate General observes that, as regards repayment of the **new operating aid**, the Greek State delayed in taking action, left large lacunae and is unable to justify its conduct by the existence of a case of absolute impossibility. However, the agreements on the settlement of debts concluded by ‘Olympic Airways’ might have sufficed had Law No 3185/2003 not been enacted. On the other hand, the application of that law may have the consequence that the implementation of the settlement agreements becomes wholly or partly impossible, in the absence of sufficient assets.

The Advocate General therefore proposes that the Court declare that **Greece has failed to fulfil its obligations under Community law.**

IMPORTANT: The Advocate General’s Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: FR, EN, DE, GR, IT

The full text of the Opinion may be found on the Court's internet site

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>

It can usually be consulted after midday (CET) on the day of delivery.

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