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Press and Information

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Judgment of the Court of Justice in Case C-415/03

Commission of the European Communities v Hellenic Republic

**JUDGMENT GIVEN AGAINST GREECE FOR NOT TAKING ALL THE
MEASURES NECESSARY FOR REPAYMENT OF THE AID GRANTED TO
OLYMPIC AIRWAYS WHICH WAS FOUND TO BE INCOMPATIBLE WITH THE
COMMON MARKET**

In 1998, the European Commission approved the grant of a certain amount of aid to the Greek State for the restructuring of the company Olympic Airways (for the period 1998 to 2002).¹

In 2002, it initiated a procedure for failure to fulfil obligations on the ground that the restructuring plan had not been implemented and that some of the conditions laid down by the decision approving the aid had not been fulfilled.

The Commission subsequently referred to the existence of new operating aid² consisting, in particular, in the toleration by the Greek State of the non-payment, or deferment of the payment dates, of VAT on aircraft fuel and spare parts, rent payable to airports for the period 1998 to 2001 (EUR 2.46 million), airport charges owed to Spata Airport (EUR 33.9 million) and a tax imposed on passengers on departure from all Greek airports (called ‘spatosimo’; EUR 61 million).

Therefore the Commission required Greece to recover from the beneficiary company, without delay and with interest, the second instalment of restructuring aid (EUR 41 million), as well as the new operating aid which it had been granted unlawfully.

Not being satisfied with the explanations provided by Greece, the Commission brought the present action. In the meantime, Greece adopted a law³ which provides for the transfer to the new company Olympic Airlines of the personnel and assets of the former company Olympic Airways which, on the other hand, retains the main liabilities.

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.

The Court of Justice finds, first, that this is a **transfer** of all the assets of the company Olympic Airways, free of all debts, to the new company Olympic Airlines and that that transfer made it impossible, under national law, to recover the debts of the former company from the new firm. The transfer thus created an obstacle to the effective implementation of the Commission's decision and the recovery of the aid by means of which the Greek State supported the commercial activities of the company. Hence, the purpose of the Commission's decision, which aims to restore undistorted competition in the civil aviation sector, has been seriously compromised.

Regarding the **recovery of EUR 41 million**, the Court notes that the action taken by the Greek authorities, that is to say, the adoption of a decision to proceed with recovery, has not in fact resulted in any actual reimbursement of that amount. Furthermore, the Greek Government has not shown why it might be absolutely impossible to proceed with recovery. Greece has therefore failed to fulfil its obligation to recover that amount from the beneficiary company.

So far as concerns the recovery of the other amounts, the Greek Government has referred to national difficulties, but again has not established the absolute impossibility of implementation. The Court finds that the initiatives taken were late, incomplete or without binding effect, as they did not result in the actual recovery of the sums owed by Olympic Airways. Those initiatives cannot be regarded as complying with the obligations of Member States in relation to the recovery of State aid.

The Court therefore declares that the Commission's application is well founded and that, by failing to take within the prescribed period all the measures necessary for repayment of the aid found to be unlawful and incompatible with the common market, the Hellenic Republic has failed to fulfil its obligations under the decision of the Commission.

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

Languages available: DE, EL, EN, ES, FR, HU, IT, NL, PL, PT

The full text of the judgment 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 judgment is delivered.

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