



LUXEMBOURG

Press and Information

PRESS RELEASE No 9/08

14 February 2008

Judgment of the Court of Justice in Case C-419/06

*Commission of the European Communities v Hellenic Republic***THE COURT OF JUSTICE GIVES JUDGMENT AGAINST GREECE FOR NOT RECOVERING STATE AID GRANTED TO NATIONAL AIRLINES***A Member State cannot justify failure to implement a Commission decision requiring it to recover State aid on the basis of that decision's alleged illegality*

The financial situation of Olympic Airways and the public financial assistance given to that company have, since 1992, been the subject of numerous Commission decisions on State aid.

A first decision of 11 December 2002¹ declared incompatible with the common market restructuring aid approved during the course of 1994, 1998 and 2000. Greece was asked to recover part of that aid, amounting to EUR 41 million. Since that decision was not implemented, the Court of Justice of the European Communities declared the action for failure to fulfil obligations to be well founded². The Court of First Instance of the European Communities, for its part, examined the validity of that decision and annulled parts of it.³

The new company Olympic Airlines, which was set up in December 2003, benefited from receiving the assets of the 'flights' division of Olympic Airways, while the latter retained substantial liabilities.

By a second decision of 14 September 2005,⁴ at issue in the present case, the Commission considered to be State aid, first, the restructuring of Olympic Airways as such, as well as the granting of financial assistance and the receipt, by that company, of other financial support; second, the receipt, by Olympic Airlines, of various forms of subsidies. These included rental payments for the sub-leasing of aircraft (approximately EUR 40 million), overvaluation of assets at the time the new company was created (approximately EUR 91.5 million), payment by the Greek State, instead of Olympic Airways, of certain bank loans and leases (EUR 8 million) and,

¹ 2003/372/EC (OJ 2003 L 132, p. 1).

² [Judgment of 12 May 2005](#) in Case C-415/03 *Commission v Hellenic Republic* (see also [press release 43/05](#)). Please note that because of failure to implement the judgment in Case C-415/03, the Commission has asked the Court to order the Greek State to make periodic penalty payments (Case [C-369/07](#) *Commission v Hellenic Republic*, pending).

³ [Judgment of 12 September 2007](#) in Case T-68/03 *Olympiaki Aeroporia (Olympic Airways) Ypiresies v Commission* (see also [press release 56/07](#)).

⁴ C(2005)2706.

finally, the continuous forbearance displayed by the Greek State towards Olympic Airways with regard to taxes and social security contributions (EUR 354 million). As set out in the decision, Greece was under an obligation to recover the various aids without delay, to immediately suspend the granting of any additional aid to Olympic Airways and Olympic Airlines and to inform the Commission of measures taken.

In the present action, Greece submitted, first, that the Commission had failed to provide a reliable method of calculation to make determination possible of the aid amounts to be recovered. Secondly, Greece challenged the validity of the decision.

The Court finds, first of all, that Greece had not fulfilled its obligations, either by the end of the time period laid down by the Commission or by the date on which the present action was brought. In addition, Greece has not relied on any absolute impossibility to implement the decision.

On the contrary, the Court finds that various provisions of the decision indicate amounts that are sufficiently precise and that there is no Community provision that requires the Commission – when it orders repayment of aid that has been declared incompatible with the common market – to determine the exact amount of aid to be repaid.

Finally, in the context of an action for failure to fulfil obligations, a Member State to which a State aid decision has been addressed cannot validly justify failure to implement that decision on the basis of its alleged illegality.

Consequently, the Court declares that, by not taking within the prescribed period all measures necessary to put an end to aid declared unlawful and incompatible with the common market, and to recover it from the recipients, Greece has failed to fulfil its obligations under the decision of 14 September 2005.

Please note that Greece, Olympic Airways and Olympic Airlines, have applied to the Court of First Instance for annulment of the Commission's decision⁵.

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

Languages available: EL EN FR

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

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-419/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

⁵ Cases [T-415/05](#) *Hellenic Republic v Commission*, [T-416/05](#) *Olympiakes Aerogrammes (Olympic Airlines) v Commission* and [T-423/05](#) *Olimpiaki Aeroporia (Olympic Airways) Ypiresies v Commission*, pending.