the judgment of the Court of Justice of 14 December 2006 in *Commission* v *Spain* (Joined Cases C-485/03 to C-490/03 [2006] ECR I-11887; 'the 2006 judgment'), relating to Spain's failure to fulfil its obligations under those decisions.

— Order the Kingdom of Spain to pay to the Commission a penalty payment in the amount of EUR 236 044,80 for every day of delay in complying with the judgment, from the day on which the judgment is delivered in this case until the day on which the 2006 judgment is fully complied with.

— Order the Kingdom of Spain to pay to the Commission a lump sum, the amount of which is calculated by multiplying a daily amount of EUR 25 817,40 by the number of days on which the infringement continues from the date on which the 2006 judgment was delivered until:

  — the date on which the Kingdom of Spain recovers the aid declared illegal by the 2001 decisions, if the Court of Justice holds that the recovery has in fact been carried out before judgment in this case is handed down.

  — the date on which the judgment in this case is delivered, if the 2006 judgment has not been fully complied with by that date.

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that the Spanish authorities have not taken all the measures necessary to comply with the 2006 judgment since they have not recovered all the aid declared illegal and incompatible in the 2001 decisions. Firstly, the Spanish authorities considered certain individual aid to be compatible with the internal market without that aid fulfilling the requirements of a national aid scheme approved by the Commission and without, in any case, fulfilling the requirements set out in the Guidelines on national regional aid (OJ 1998 C 74, p. 9). Secondly, the Spanish authorities applied a deduction to certain beneficiaries of up to EUR 100 000 per beneficiary for a period of three years without respecting the rules relating to *de minimis* aid. Thirdly, in some cases the Spanish authorities retrospectively applied tax deductions provided for in Spanish tax laws although not all the requirements laid down by Spanish legislation for the application of such deductions were fulfilled. Finally, fourthly, not all of the payment orders issued by the Spanish authorities were paid by the beneficiaries of illegal aid. According to the Commission's calculations, the amounts for which recovery is pending represent approximately 87 % of the total illegal aid to be recovered.

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 20 April 2011 — Stanleybet International Ltd, William Hill Organisation Ltd and William Hill plc v Ipourgos Ikonomias kai Ikonomikon and Ipourgos Politismou

(Case C-186/11)

(2011/C 186/26)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicants: Stanleybet International Ltd, William Hill Organisation Ltd and William Hill plc

Respondents: Ipourgos Ikonomias kai Ikonomikon and Ipourgos Politismou

Questions referred

1. Is national legislation which, in order to attain the objective of restricting the supply of games of chance, grants the exclusive right to run, manage, organise and operate games of chance to a single undertaking, which has the form of a public limited company and is listed on the stock exchange, compatible with Articles 43 and 49 of the EC Treaty where, moreover, that undertaking advertises the games of chance which it organises and it expands abroad, players participate freely and the maximum bet and winnings are set per form and not per player?

2. If the answer to the first question referred is in the negative, is national legislation which, in seeking exclusively to combat criminality by exercising control over the undertakings that operate in the sector at issue so as to ensure that those activities are carried out solely within controlled systems, grants a single undertaking the exclusive right to run, manage, organise and operate games of chance compatible with Articles 43 and 49 of the EC Treaty even where grant of the right results in parallel in unrestricted expansion of the supply in question? Or is it necessary in every case, in order for that restriction to be considered suitable for achieving the objective of combating criminality, that the expansion of supply be controlled in any event, that is to say, be only as great as is required in order to achieve that objective? If that expansion must in any event be controlled, can expansion be considered controlled from that point of view if the exclusive right in the sector in question is granted to a body with the attributes described in the first question referred? Finally, if grant of the exclusive

right in question is considered to result in controlled expansion of the supply of games of chance, does its grant to just a single undertaking go beyond what is necessary, in the sense that the same objective can also be profitably served by granting that right to more than one undertaking?

3. If, following the above two questions referred, it were to be held that the grant, by the national provisions relevant in the case in point, of an exclusive right to run, manage, organise and operate games of chance is not compatible with Articles 43 and 49 of the EC Treaty: (a) is it permissible, for the purposes of those provisions of the Treaty, for the national authorities not to examine, during a transitional period necessary in order to enact rules compatible with the EC Treaty, applications to engage in the activities in question submitted by persons lawfully established in other Member States; (b) if the answer is in the affirmative, on the basis of what criteria is the duration of that transitional period determined; (c) if no transitional period is allowed, on the basis of what criteria must the national authorities rule on the applications?

Action brought on 20 April 2011 — European Commission v Kingdom of Spain

(Case C-189/11)

(2011/C 186/27)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: L. Lozano Palacios and C. Soulay, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that

— by applying the special scheme for travel agents in cases where travel services have been sold to a person other than the traveller;

— by excluding from that special scheme sales to the public, by retail agents acting in their own name, of trips organised by wholesale agents;

— by authorising travel agents, in certain circumstances, to charge in the invoice an overall amount that is not related to the actual VAT charged to the customer, and by authorising the latter, where he is a taxable person, to deduct this overall amount from the VAT payable; and

— by authorising travel agencies, insofar as they benefit from the special scheme, to make an overall determination of the basis of assessment of the tax for each tax period;

the Kingdom of Spain has failed to fulfil its obligations under Articles 73, 168, 169, 226 and 306 to 310 of Council Directive 2006/112/EC [1] of 28 November 2006 on the common system of value added tax,

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission considers that the application by the Kingdom of Spain of the special scheme for travel agents, insofar as it is not limited to services provided to travellers, as the directive prescribes, but is extended to operations carried out between travel agents, infringes the provisions of the legislation concerning VAT.

Furthermore, the exclusion from that special scheme of sales to the public, by retail agents acting in their own name, of trips organised by wholesale agents is not compatible with the directive either, as such activities, without any doubt in the opinion of the Commission, fall within the activities covered by the special scheme.

Likewise, the Commission considers that the Spanish rules authorising travel agents, without any basis in that directive, to charge in the invoice an overall VAT amount that is not related to the actual VAT charged to the customer, or that authorise the latter, where he is a taxable person, to deduct this overall amount from the VAT payable, or that allow travel agencies, insofar as they benefit from the special scheme, to make an overall determination of the basis of assessment of the tax for each tax period, infringe the VAT directive.

[1] OJ 2006 L 347, p. 1.

Appeal brought on 28 April 2011 by Lan Airlines S.A. against the judgment of the General Court (Fourth Chamber) delivered on 8 February 2011 in Case T-194/09 Lan Airlines S.A. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Air Nostrum, Líneas Aéreas del Mediterráneo, S.A.

(Case C-198/11 P)

(2011/C 186/28)

Language of the case: Spanish

Parties

Appellant: Lan Airlines S.A. (represented by: E. Armijo Chávarri, abogado)