

Bulgaria has the right to adopt a decision on the recovery of State aid that does not comply with the requirements of Article 9(4) of Protocol 2 to the Europe Agreement? If the Court of Justice should answer this question in the negative an interpretation of the following question is requested:

2. Is the provision in paragraph 1 of the part of Annex V to the Act concerning the conditions of accession of the Republic of Bulgaria and Romania to the European Union relating to competition rules to be interpreted as meaning that the State aid in question constitutes 'new aid' within the meaning of subparagraph 2 of paragraph 1 of that Annex? If so, are the provisions of Articles 107 and 108 TFEU (Articles 87 EC und 88 EC) on State aid and the provisions of Regulation No 659/1999 <sup>(1)</sup> to apply in such a case to such 'new aid'?
- (a) If the answer to this question is in the negative the following question will have to be answered: Are the provisions in paragraph 1 of Annex V to the Act of Accession to be interpreted as meaning that the competent national authorities cannot take steps to recover State aid such as that in the main proceedings before the Commission has taken a decision by which the State aid at issue is declared incompatible with the common market?
- (b) If the answer given to the previous question is in the affirmative: Is the Commission Decision of 15 December 2009 produced to the Varhoven administrativen sad (Higher Administrative Court) to be considered a negative decision on unlawful aid within the meaning of Article 14 of Regulation No 659/1999?

<sup>(1)</sup> Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1)

## Action brought on 31 May 2011 — European Commission v Czech Republic

(Case C-269/11)

(2011/C 232/31)

*Language of the case: Czech*

### Parties

*Applicant:* European Commission (represented by: L. Lozano Palacios and M. Šimerdová, acting as Agents)

*Defendant:* Czech Republic

### Form of order sought

- declare that, by permitting travel agencies, pursuant to Paragraph 89 of Law No 235/2004 Coll. on Value Added Tax, to apply the special scheme for travel agents to the provision of travel services to persons other than travellers, the Czech Republic has failed to fulfil its obligations under Articles 306 to 310 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax

— order the Czech Republic to pay the costs.

### Pleas in law and main arguments

In the Czech Republic the special scheme of VAT for travel agents introduced by Articles 306 to 310 of Council Directive 2006/112/EC is applied not only to supplies provided by travel agents to travellers but also to supplies provided to persons other than travellers. Pursuant to Paragraph 89 of Law No 235/2004 Coll. on Value Added Tax, the special scheme is also applied in the Czech Republic where a travel service is provided to a legal person which sells that service on to other travel agents. In the opinion of the Commission, that is contrary to the provisions of Articles 306 to 310 of Council Directive 2006/112/EC, which require the special scheme for travel agents to be used only in cases where a travel service is supplied to a traveller. The wording of Articles 306 to 310 of Council Directive 2006/112/EC, and the objective which those provisions pursue, support the position of the Commission.

**Reference for a preliminary ruling from the Simvoulis tis Epikratias (Greece) lodged on 31 May 2011 — Techniko Epimelitrio Elladas (TEE), Syllogos Ellinon Diplomatouchon Aeronafpigon Mechanikon (HEAS), Alexandros N. Tsiapas and Others, Panellinios Syllogos Aerolimenikon Ypiresias Politikis Aeroporias and Other v Ipourgos Esoterikon, Dimosias Dioikisis kai Apokentrosis, Ipourgos Metaforon kai Epikoinonion, Ipourgos Economias kai Economikon**

(Case C-271/11)

(2011/C 232/32)

*Language of the case: Greek*

### Referring court

Simvoulis tis Epikratias

### Parties to the main proceedings

*Applicants:* Techniko Epimelitrio Elladas (Hellenic Technical Chamber, TEE), Syllogos Ellinon Diplomatouchon Aeronafpigon Mechanikon (Hellenic Society of Aeronautical Engineers, HEAS), Alexandros N. Tsiapas and Others, Panellinios Syllogos Aerolimenikon Ypiresias Politikis Aeroporias (Civil Aviation Authority National Airports Association) and Others

*Defendants:* Ipourgos Esoterikon, Dimosias Dioikisis kai Apokentrosis, Ipourgos Metaforon kai Epikoinonion, Ipourgos Economias kai Economikon (Minister for the Interior, Public Administration and Decentralisation; Minister for Transport and Communications; Minister for Economic Affairs and Finance)

### Questions referred

- (a) Within the meaning of Article 2 of Regulation (EC) No 2042/2003, in conjunction with provision M.B.902(b)(1) in Subpart I of Section B of Annex I to the said regulation, and in light of the requirements of provision AMC M.B.102(c)(1) (subparagraphs 1.1–1.4, 1.6 and 1.7) in