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 ([1]) 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?

([1]) 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 Simvoulio 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

Simvoulio 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

Subpart A of Section B of Annex 1 to EASA Decision No 2003/19/RM of 28 November 2003 on acceptable means of compliance with the above Regulation (EC) No 2042/2003, does the national legislature have the discretion, when enacting additional measures for the implementation of the said regulation, to divide the job of aircraft review, in order to establish compliance with current airworthiness requirements, between several categories/specialisms of inspectors, each of whom is only required to inspect one particular aspect of the aircraft's airworthiness? More importantly, is a national regulation, such as the critical regulation at issue, which makes provision for Airworthiness and Avionics Inspectors, Flight Operations Inspectors, Cabin Safety Inspectors and Licensing Inspectors, compatible with the above Regulation (EC) No 2042/2003?

(b) If the answer to the previous question is in the affirmative, does provision M.B.902(b)(1) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003 mean that anyone to whom aircraft airworthiness review duties are assigned in respect of one particular aspect only must have five years' experience in all aspects ensuring the continuing airworthiness of the aircraft or does it suffice if they have five years' experience in the particular duties assigned to them and their particular specialism?

(c) If the answer to the above question is that five years' experience in the particular duties assigned to the review staff suffices, does a national regulation, such as the critical regulation at issue, which stipulates that Airworthiness and Avionics Inspectors responsible for supervising and controlling aircraft, approved maintenance organisations and air travel in accordance with the rules set out in the ICAO manual doc 9760 must have at least five years' previous experience in an aircraft maintenance organisation and must have worked on aircraft maintenance, satisfy the requirements of the aforementioned provision M.B.902(b)(1) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003 requiring review staff to have 'at least five years experience in continuing airworthiness'?

(d) If the answer to the previous question is in the affirmative, is a national regulation, such as the critical regulation at issue, which equates holders of aircraft maintenance licences in accordance with Part-66 (Annex III) of the said regulation with holders of an aeronautical degree, by providing that both these categories of persons must have experience in an aircraft maintenance organisation in order to obtain accreditation as Airworthiness and Avionics Inspectors, compatible with Regulation (EC) No 2042/2003?

(e) In light of the requirements of provision AMC M.B.102(c)(1), subparagraphs 1.4 and 1.5, in Subpart A of Section B of Annex I to EASA Decision No 2003/19/RM dated 28 November 2003 on acceptable means of compliance with the above Regulation (EC) No 2042/2003, does five years' experience in continuing airworthiness, in accordance with provision M.B.902(b)(1) in Subpart I of Section B of Annex I to the said Regulation (EC) No 2042/2003, mean practical experience which may have been acquired during the course of studies leading to academic qualification or only experience acquired under actual working conditions, independently of studies and once they have been completed and the qualification obtained?

(f) Within the meaning of the above provision of Regulation (EC) No 2042/2003, does five years' experience in continuing airworthiness also mean experience which may have been acquired by performing airworthiness reviews in the past, even before the said regulation entered into force?

(g) Within the meaning of provision M.B.902(b)(2) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003 and for the purpose of initial selection as an inspector, must the holder of an aircraft maintenance licence in accordance with Part-66 (Annex III to the said Regulation (EC) No 2042/2003) undergo additional education in aspects of aircraft airworthiness prior to selection or does it suffice if that person is provided with such education after their initial selection and before they assume the duties of inspector?

(h) Within the meaning of provision M.B.902(b)(3) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003, which requires review staff to have 'formal aeronautical maintenance training', can a training system adopted by the national legislature be construed as constituting such training if: (a) it provides training after the initial selection of an inspector based on formal qualifications alone; (b) this training is not differentiated depending on the formal qualifications of the person initially selected as inspector and (c) the training system does not make provision either for a procedure and criteria for evaluating trainees or for final examination of trainees on completion of training, in order to establish their aptitude?

(i) Does provision M.B.902(b)(4) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003, providing that airworthiness review staff should have 'a position with appropriate responsibilities', mean that the position is a qualification which a person must have in order to be accredited as an inspector, in the sense that they must have held a senior position in their previous employment? Or does the above provision of Regulation (EC) No 2042/2003 mean, in light of the requirements of provision AMC M.B.902(b)(3) in Subpart A of Section B of Annex I to EASA Decision No 2003/19/RM dated 28 November 2003, that, having been initially selected as an inspector, the person must be given a position in the airworthiness review authority which allows him to engage the liability of that authority by signing on its behalf?

(j) If the aforementioned provision M.B.902(b)(4) in Subpart I of Section B of Annex I to the Regulation has the second meaning set out above, can the requirement of the Regulation be construed, in light of that meaning, as being satisfied by a national regulation that makes provision for inspectors to be accredited following theoretical and practical training, at which point they can carry out aircraft airworthiness reviews and engage the liability of the competent authority by alone signing the review documents?

(k) Furthermore, if the aforementioned provision M.B.902(b)(4) in Subpart I of Section B of Annex I to Regulation (EC) No 2042/2003 has the second meaning set out above, is a national provision, such as the critical regulation at issue, which provides that it is desirable for persons initially selected as Airworthiness and Avionics Inspectors to have previously been promoted to 'senior positions of responsibility in an aircraft maintenance organisation', compatible with it?

(l) Within the meaning of Regulation (EC) No 2042/2003, which does not regulate the question of whether and under what conditions persons performing airworthiness review duties before it entered into force are entitled to continue to perform such duties following the entry into force of the said regulation, was the national legislature obliged to provide that persons who were performing the duties of inspector when the above regulation entered into force (or possibly before then) should automatically be reaccredited as inspectors, without first undergoing a selection and evaluation procedure? Or does the above Regulation (EC) No 2042/2003, the aim of which is to improve the safety of air transport, not to safeguard the professional rights of employees of the Member State's authority responsible for airworthiness reviews, mean that the Member States are simply granted the discretion, in light also of the relevant requirements of provision AMC M.B.902(b)(4) in Subpart A of Section B of Annex I to EASA Decision No 2003/19/RM dated 28 November 2003, to continue, if they deem appropriate, to employ as airworthiness inspectors persons who were carrying out airworthiness reviews before the aforementioned regulation entered into force, even if those persons do not have the qualifications required under the said regulation?

(m) If it is found that, within the meaning of Regulation (EC) No 2042/2003, the Member States are obliged automatically to reaccredit persons who were performing the duties of inspector before the said regulation entered into force, without applying a selection procedure, is a national provision, such as the critical provision at issue, which provides that, in order to be reaccredited as inspectors, those persons must have actually been performing the duties of inspector not on the date on which the above regulation entered into force, but on the later date, when the said provision of national law entered into force, compatible with that regulation?

## Action brought on 9 June 2011 — European Commission v Hellenic Republic

**(Case C-293/11)**

(2011/C 232/33)

*Language of the case: Greek*

### Parties

*Applicant:* European Commission (represented by: D. Triantafillou and C. Soulay)

*Defendant:* Hellenic Republic

### Form of order sought

— declare that, by applying the special VAT scheme for travel agents in cases where the travel services have been sold to a person other than the traveller, the Hellenic Republic has failed to fulfil its obligations under Articles 306 to 310 of Directive 2006/112/EC; ([1])

— order the Hellenic Republic to pay the costs.

### Pleas in law and main arguments

The scheme for travel agents applies only to services which are supplied directly to travellers, in accordance with the directive's wording in most languages. Even the English version, which uses, at one point only, the term 'customer', would not make sense unless it related solely to travellers. The same conclusion results from a combined reading of all the relevant provisions (systemic argument). A historic interpretation also supports the same conclusion, since the VAT directive merely codified the Sixth Directive, without altering its content. So far as concerns a teleological interpretation, what is important is that double taxation of agents in certain Member States not be allowed (by the exclusion of deductions in the event of extended application of the scheme for travel agents). Any shortcoming of the directive cannot be corrected by individual States without its text being officially amended.

([1]) OJ L 347, 11.12.2006.

## Action brought on 10 June 2011 — Italian Republic v Council of the European Union

**(Case C-295/11)**

(2011/C 232/34)

*Language of the case: Italian*

### Parties

*Applicant:* Italian Republic (represented by: G. Palmieri, Agent, and S. Fiorentino, Avvocato dello Stato)

*Defendant:* Council of the European Union