

Order of the President of the General Court of 25 October 2010 — Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro v Commission

(Case T-353/10 R)

(Application for interim measures — Financial assistance — Debit note for recovery of financial assistance — Application for suspension of execution — Failure to have regard to formal requirements — Inadmissibility)

(2010/C 346/86)

Language of the case: Greek

Parties

Applicant: Lito Maieftiko Gynaikologiko kai Cheirourgiko Kentro AE (Athens, Greece) (represented by: E. Tzannini, lawyer)

Defendant: European Commission (represented by: D. Triantafyllou and A. Sauka, Agents)

Re:

Application for suspension of execution of a debit note issued by the Commission on 22 July 2010 for the recovery of the sum of EUR 109 415,20 paid in the context of financial assistance in support of a medical research project.

Operative part of the order

1. *The application for interim measures is dismissed;*
2. *Costs are reserved.*

Action brought on 17 September 2010 — IEM Erga — Erevnes Meletes Perivallontos & Khorotaxias v Commission

(Case T-435/10)

(2010/C 346/87)

Language of the case: Greek

Parties

Applicant: IEM Erga — Erevnes Meletes Perivallontos & Khorotaxias A.E. (Athens, Greece) (represented by: N. Sofokleous, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the preparatory act of the European Commission's Directorate-General for Research of 7 May 2010 notifying the applicant of the decision to issue it with a demand for payment;
- annul demand for payment (debit note) No 3241004968 of the European Commission;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of the preparatory act of the European Commission's Directorate-General for Research of 7 May 2010 notifying it of the decision to issue it with a demand for payment and the annulment of demand for payment (debit note) No 3241004968 of 14 July 2010 which was issued under Contract FAIR-CT98-9544.

In support of its pleas, the applicant puts forward the following grounds:

- lack of lawful basis and lack of competence inasmuch as the contested measures, which were adopted in the context of Contract FAIR-CT98-9544, are administrative measures adopted without a lawful basis and without competence, because that contract, which is governed, pursuant to Article 10 thereof, exclusively by Greek law, does not grant the Commission the right to determine unilaterally and recover autonomously its claims arising from the contract;
- lack of lawful reasoning, lack of proof and denial of the Commission's assertions inasmuch as, as is shown by the General Court's judgment in Case T-7/05 and the invoices issued by the applicant for the supply of services, the sums which the applicant received from Parthenon A.E. in respect of those invoices constituted part of its remuneration for the supply of the services set out in the invoices and not an advance payment which Parthenon A.E. had received from the Commission as the applicant's representative;
- contradictory reasoning in the contested measures;
- lack of lawful reasoning and lack of proof inasmuch as the arguments by which the Commission justifies the contested measures are not demonstrated either by the grounds of the General Court's judgment in Case T-7/05 *Commission v Parthenon A.E.* or by the invoices adduced before the General Court or the other evidence.

Action brought on 17 September 2010 — Dow AgroSciences and Dintec Agroquímica — Produtos Químicos v Commission

(Case T-446/10)

(2010/C 346/88)

Language of the case: English

Parties

Applicants: Dow AgroSciences Ltd (Hitchin, United Kingdom) and Dintec Agroquímica — Produtos Químicos, Lda (Funchal, Portugal) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: European Commission

Form of order sought

- declare the application admissible and well-founded;
- annul Decision 2010/355/EU;
- order the Commission to pay the costs of the proceedings,
- take such other or further measures as justice may require.

Pleas in law and main arguments

By means of this application the applicants seek the annulment of the Commission Decision 2010/355/EU of 25 June 2010 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC ⁽¹⁾.

The applicants put forward two pleas in law in support of their claims.

First, they argue that the contested decision is unlawful since it is based on, and exists only because, of an unlawful decision. That other decision ⁽²⁾, 2007/629/EC ⁽³⁾, is the original non-inclusion decision for trifluralin which resulted from the Article 8(2) of Directive 91/414 ⁽⁴⁾ review of the substance. Had decision 2007/629/EC not been adopted unlawfully, the contested decision would not exist.

Second, the applicants submit that the contested act is itself unlawful for self-standing reasons. They contend that the Commission has erred as a matter of law in justifying the contested act on the grounds of the alleged concerns regarding:

- potential long-range transport; in this regard, the applicants claim that the Commission failed to take into account data (lack of scientific justification) and violated the principle of sound administration and right of defence. Moreover, the approach adopted by the Commission with regard to long-range transport is, in the applicants' view, discriminatory and disproportionate;
- fish toxicity; in this regard, the applicants claim that the scientific justification does not support the finding. Moreover, in their opinion, the contested act is disproportionate in the way it approaches the alleged chronic toxic concern.

⁽¹⁾ Notified under document C(2010) 4199, OJ 2010 L 160, p. 30

⁽²⁾ Contested by the applicants in the framework of Case T-475/07, *Dow Agrosciences and Others v Commission*, OJ 2008 C 51, p. 54

⁽³⁾ Commission Decision of 20 September 2007 concerning the non-inclusion of trifluralin in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (notified under document number C(2007) 4282), OJ 2007 L 255, p. 42

⁽⁴⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, OJ 1991 L 230, p. 1

Action brought on 21 September 2010 — Evropaiki Dynamiki v Court of justice

(Case T-447/10)

(2010/C 346/89)

Language of the case: English

Parties

Applicant: Evropaiki Dynamiki — Proigmena Systimata Tilepi-koinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis and M. Dermizakis, lawyers)

Defendant: Court of justice

Form of order sought

- annul the defendant's decision to reject the bids of the applicant, filed in response to the open call for tenders CJ 7/09 "Public contracts for the provision of information technology services" ⁽¹⁾, and all further related decisions of the defendant including the one to award the respective contracts to the successful contractors;
- order the defendant to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of EUR 5 000 000
- order the defendant to pay the applicant's damages suffered on account of the loss of opportunity and damage to its reputation and credibility of the amount of EUR 500 000;
- order the defendant to pay the applicant's legal and other costs and expenses incurred in connection with this application even if the current application is rejected.

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision of 12 July 2010 to reject its bids submitted in response to a call for an open tender CJ 7/09 for the services of information technology and to award the contracts to the successful contractors. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward the following grounds.

First, the applicant argues that the contracting authority failed to observe the principle of non discrimination of candidate tenderers since several of the winning tenderers did not comply with the exclusion criteria and thus has infringed Articles 93 and 94 of the financial regulation ⁽²⁾, Article 133 of the implementing rules as well as the principle of good administration.