

Pleas in law and main arguments

The applicants challenge the Commission's decision to reject their tender submitted in connection with the call for tenders procedure concerning contract 'DIGIT/R2/PO/2007/024 — Managed services provision' (OJ 2007 S 159 — 197776) and the decision not to award the contract in the absence of satisfactory tenders and to open the negotiated procedure.

In support of their application, the applicants claim, first of all, that the contested decision was not taken in compliance with the rules for the conferral of powers within the Commission, since the decision was taken by an 'Acting Head of Unit'. The applicants take the view that it was not established that the author of the measure was in fact entitled to adopt such a decision in the Commission's name.

Secondly, the applicants submit that the Commission infringed its obligation to state reasons by not setting out, in its decision, the grounds on which it considered that certain prices in the applicant's tender were unusually low and that the tender did not comply with the relevant legal provisions in the event of performance of the contract in Brussels or Luxembourg.

Finally, the applicants consider that the Commission infringed the procedure for checking that the prices were lawful, in so far as (i) the Commission excluded the applicant's tender on the basis of the procedure in respect of unusually low prices, whereas the tender was financially sound, (ii) the Commission did not take into account the reasons provided by the applicants and (iii) the contested decision was not based on an accurate account of the facts.

Appeal brought on 14 August 2008 by Marianne Timmer against the order of the Civil Service Tribunal delivered on 5 June 2008 in Case F-123/06 Timmer v Court of Auditors

(Case T-340/08 P)

(2008/C 285/80)

Language of the case: French

Parties

Appellant: Marianne Timmer (Saint-Sauves-d'Auvergne, France) (represented by F. Rollinger, lawyer)

Other party to the proceedings: Court of Auditors of the European Communities

Form of order sought by the appellant

- Annul the order of 5 June 2008 in Case F-123/06 *Marianne Timmer v Court of Auditors*;
- Uphold the claim for compensation for loss suffered;
- Uphold the claim for costs against the Court of Auditors.

Pleas in law and main arguments

By this appeal, the applicant seeks annulment of the order of the Civil Service Tribunal of 5 June 2008 in Case F-123/06 *Timmer v Court of Auditors* whereby the Tribunal dismissed as inadmissible her action claiming, first that the Tribunal should annul her staff reports for the period 1984 to 1997 along with the connected and/or subsequent decisions, including that appointing the reporting officer concerned to the position of Head of the Dutch Unit in the Translation Department of the Court of Auditors and, second, a claim for damages to compensate for the loss allegedly suffered.

In support of her appeal, the applicant relies on six pleas in law alleging:

- distortion the facts capable of being inferred from the evidence submitted to the Tribunal and error in assigning the burden of proof;
- distortion of the applicant's request to the appointing authority of 29 July 2005 concerning compliance with Article 14 of the Staff Regulations of Officials of the European Communities in the version in force prior to the modification thereof by the entry into force Regulation No 723/2004 (!) inasmuch as that request did not seek the re-examination of the applicant's staff reports as indicated at paragraph 37 of the order under appeal;
- error in the legal classification of the pre-litigation complaint of 26 February 2006, the aim of which was the annulment of the staff reports and the decision on the applicant's career and not 'taking into account of numerous other new facts' (paragraph 41 of the order under appeal);
- failure to state reasons for the decision to reject the complaint;
- in the alternative, failure to state sufficient reasons for that decision to reject, inasmuch as the Tribunal should have examined the insufficiency of the reasons stated;

— error in the application of the case-law regarding the unlawful exercise of activities by the applicant's hierarchical superior, since the applicant did not claim that those staff reports were vitiated by the unlawfulness of the appointment of her hierarchical superior, but by the unlawful occupation of a position which the applicant could have held and by the personal interest of her hierarchical superiors (paragraph 42 of the order under appeal).

(¹) Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

Action brought on 19 August 2008 — Arkema France v Commission

(Case T-343/08)

(2008/C 285/81)

Language of the case: French

Parties

Applicant: Arkema France (Colombes, France) (represented by: A. Winckler, S. Sorinas Jimeno and H. Kanellopoulos, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul, on the basis of Article 230 EC, the decision adopted by the Commission of the European Communities of 11 June 2008 in Case COMP/38.695 in so far as it concerns Arkema;
- In the alternative, annul or reduce, on the basis of Article 229 EC, the amount of the fine imposed on the applicant by that decision;
- Order the Commission of the European Communities to pay the entire costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment in part of Commission Decision C(2008) 2626 final of 11 June 2008 in Case COMP/38.695 — Sodium Chlorate, by which the Commission found that certain undertakings, including the applicant, infringed Article 81(1) EC and Article 53(1) of the

Agreement on the European Economic Area by sharing sales volumes, by fixing prices, by exchanging commercially sensitive information on prices and sales volumes and by monitoring the execution of those anticompetitive arrangements on the market for sodium chlorate in the European Economic Area.

In support of its action, the applicant relies on four pleas in law alleging:

- an infringement of the rules concerning the responsibility of a parent company for offences committed by a subsidiary, inasmuch as the Commission committed errors of fact by asserting that Elf Aquitaine had a decisive influence on the applicant's commercial policy;
- an infringement of the applicant's rights of defence and of the principles of proportionality, *non bis in idem*, equality of treatment and of sound administration, since the basic amount of the fine payable by the applicant was increased by 90 % on the ground of recidivism;
- an underestimate of the value of the information provided by the applicant pursuant to the Leniency Notice of 2002 (¹), inasmuch as the applicant should have received a reduction of the fine of between 30 and 50 %; and
- errors of law and of fact and an infringement of the principles of sound administration, proportionality and equality of treatment, since the Commission did not grant the applicant a reduction of the fine on the basis of its cooperation in the administrative procedure.

(¹) Commission notice on immunity from fines and reduction of fines in cartel cases (OJ 2002 C 45, p. 3).

Action brought on 26 August 2008 — Aragonesas Industrias y Energía v Commission

(Case T-348/08)

(2008/C 285/82)

Language of the case: English

Parties

Applicant: Aragonesas Industrias y Energía, SA (Barcelona, Spain) (represented by: I. Forrester, K. Struckmann, P. Lindfelt, J. Garcia-Nieto Esteva, lawyers)

Defendant: Commission