

The first and only plea in law raised by the applicant points at the alleged infringement by the Publications Office of the principles of transparency and equal treatment of tenderers contained in Article 15 TFEU and in Article 89 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter 'the Financial Regulation')⁽¹⁾, to the infringement of the obligation to award the contract on the basis of an evaluation of the selection criteria contained in Article 100(1) of the Financial Regulation, to its failure to adequately state the reasons for its decision (breach of Article 296 TFEU) and to the several manifest errors of assessment it has allegedly made, thus invalidating its decision that the tender of Post Luxembourg, and not that of the applicant, is the economically the most advantageous tender.

In the first part of the plea in law, the applicant claims that the Publications Office has failed to base its decision on an evaluation of the selection and award criteria, in breach of Article 100 (1) of the Financial Regulation.

In the second part of the plea in law, the applicant argues that the Publications Office has applied various sub criteria in its evaluation of the tenders that were not contained in the tender specifications and has thus violated the principle of transparency as laid down in Article 15 TFEU and Article 89 of the Financial Regulation.

In the third part of its plea, the applicant claims that the Publications Office has applied the open-ended technical award criteria in an inconsistent manner, effectively removing all transparency from the evaluation process.

In the fourth part of its plea, the applicant contends that the Publications Office, in violation of Articles 15, 296 TFEU, 89 of the Financial Regulation as well as the general procedural requirements of the duty to state reasons and of transparency, has not provided an adequate and unequivocal statement of reasons for its evaluation of the tenders, the motivation of the decision allegedly being contradictory and vitiated by manifest errors of assessment.

Further, the applicant submits that since the contested decision is vitiated by breaches of European law, the Publications Office has committed a fault and is thus liable under Article 340 TFEU. In fact, the applicant claims that due to the decision to award the contract to Post Luxembourg instead of the applicant, the latter has incurred a serious loss, consisting of a chance to have the contract awarded to it and of all the expenses made by it relating to the preparation and the drafting of the tender, as well as in defending its position.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Appeal brought on 21 December 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 7 October 2009 in Case F-3/08, Marcuccio v Commission

(Case T-515/09 P)

(2010/C 51/74)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal,
- declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever,
- allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance;
- order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings;
- in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 7 October 2009 in Case F-3/08. That order dismissed as manifestly unfounded an action seeking annulment of the Commission's decision refusing to send to the appellant a translation in Italian of a previous decision and an order that the Commission pay compensation for the damage resulting from that refusal. The order under appeal also ordered the appellant, pursuant to Article 94(a) of the Rules of Procedure of the CST, to pay to the Tribunal the sum of EUR 1 000.

In support of his claims, the appellant relies on the following pleas:

- a total failure to state reasons and distortion and misrepresentation of the facts insofar as concerns the assertions made by the CST concerning whether it was possible for the appellant to understand the content of the letter in question in the language version in which it was notified to him.
- Failure to have regard to the rules of law relating to the right of any individual to apply to a Community institution using any of the official languages of the Union and to receive a reply in the same language.
- Misinterpretation and misapplication of Article 94 of the Rules of Procedure of the CST.

Appeal brought on 21 December 2009 by Luigi Marcuccio against the order of the Civil Service Tribunal made on 7 October 2009 in Case F-122/07, Marcuccio v Commission

(Case T-516/09 P)

(2010/C 51/75)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal;
- declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible in its entirety and without any exception whatsoever;
- allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance;
- order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings;
- in the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 7 October 2009 in Case F-122/07. That order dismissed as partly manifestly inadmissible and partly manifestly unfounded an action seeking annulment of the Commission's decision to reject the appellant's request that an investigation be carried out in relation to certain events which occurred in 2001 and 2003 and an order that the Commission pay compensation for the damage suffered as a result.

In support of his claims, the appellant alleges that the order under appeal distorted and misrepresented the facts and misinterpreted and misapplied the obligation to give reasons for measures.

Action brought on 21 December 2009 — Alstom v Commission

(Case T-517/09)

(2010/C 51/76)

Language of the case: French

Parties

Applicant: Alstom (Levallois Perret, France) (represented by: J. Derenne and A. Müller-Rappard, lawyers)

Defendant: European Commission

Form of order sought

- Annul the Commission decision of 7 October 2009 in Case COMP/F/39.129 — *Power Transformers*; and
- Annul the decision of the Commission's accounting officer of 10 December 2009;
- Order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, Alstom requests, first, the annulment of Commission Decision C(2009) 7601 Final of 7 October 2009 — *Power Transformers*, relating to a proceeding under Article 81 EC (now Article 101 TFEU) and Article 53 EEA, concerning an agreement on European market for power transformers and, secondly, the annulment of the decision of the Commission's accounting officer of 10 December 2009 rejecting Alstom's request to provide a financial guarantee during the proceedings initiated by the present application.