

On the basis of its third ground for annulment, the applicant contends that the institutions breached Article 3(4) of the Basic Regulation and made a manifest error of assessment, by failing to decumulate Armenia from allegedly dumped imports and, in that context, failing to consider the fundamental overhaul of Armenia's production activity during the period 2004-2006 and quality problems of Armenian product concerned during the re-launch and readjustment of manufacturing operations in 2007 during the investigation period.

On the basis of its fourth ground for annulment, the applicant claims that the Commission, by its process of consideration and its statement of reasons for rejecting the price undertaking offer from the applicant and at the same time accepting an undertaking offer from a Brazilian exporting producer in similar circumstances, has committed a breach of the fundamental legal principle of equal treatment/non-discrimination and made manifest errors of assessment.

On the basis of its fifth ground for annulment, it is submitted that the Commission has breached the fundamental principle of EU law of good governance, thereby breaching an essential procedural requirement, by making a public and direct reference to the applicant, to the on-going anti-dumping investigation at issue and allegedly creating a bias with the institutions responsible for the anti-dumping investigation, in the direction of imposing anti-dumping duties on exports of the applicant.

(¹) Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community (OJ 1996 L 56, p. 1)

Action brought on 23 December 2009 Ecoceane v EMSA

(Case T-518/09)

(2010/C 80/50)

Language of the case: French

Parties

Applicant: Ecoceane (Paris, France) (represented by: S. Spalter, lawyer)

Defendant: European Maritime Safety Agency (EMSA)

Forms of order sought

— Declare Ecoceane's action admissible;

— Annul the contested decision of EMSA of 28 October 2009 rejecting Ecoceane's tender;

— Annul EMSA's decision to award the contract (2009/S 42-060271) and the signature thereof;

— Order EMSA to pay to Ecoceane, the applicant, the amount of EUR 224 774 by way of damages and interest;

— Order EMSA to pay to Ecoceane, the applicant, the amount of EUR 25 000 by way of non-recoverable costs;

— Order EMSA to pay the costs.

Pleas in law and main arguments

In the present case the applicant seeks annulment of the decision of 28 October 2009 by which EMSA rejected its tender at the end of a tendering procedure for the award of a public services contract relating to intervention by support vessels for combating oil pollution, and EMSA's decision to award the contract and the signature thereof. The applicant also seeks damages for the losses occasioned by the contested decision.

The applicant puts forward four pleas in law in support of its application.

First, it submits that EMSA, in failing to provide the information requested by the applicant, namely the analysis report of the tenders containing the information relating to the running of the procedure, the grounds for the rejection of its tender, the scores obtained by the tenders using the percentages set out in the tender specifications, and also the features and advantages of the successful tenderer's tender, infringed Article 100(2) of Financial Regulation No 1605/2002/EC (¹) and Article 149(3) of Regulation No 2342/2002/EC (²), as the reasons given for the rejection decision do not comply with those provisions.

The applicant submits, secondly, that the additional criteria imposed by EMSA in its tender specifications, with a view to examining and assessing the tenders, were not objective and justifiable, given the subject-matter of the contract; consequently, the choice of the additional criteria corresponding to a pre-identified technology does not ensure equal access to candidates offering an innovative method and infringes the Community principles of equal treatment, non-discrimination and transparency, referred to in Article 89(1) of Financial Regulation No 1605/2002/EC.

The applicant submits, thirdly, that the defendant infringed the principles of equal treatment, non-discrimination and transparency in dealing with the candidates, by refusing to visit the de-pollution vessel offered by Ecoceane, contrary to the treatment accorded the other candidates. The defendant also infringed those principles by failing to have Ecoceane heard by a committee for the evaluation of tenders, composed of at least three members present throughout the meeting, in accordance with Article 146 of Regulation No 2342/2002/EC.

Lastly, the applicant submits that EMSA made manifest errors of assessment.

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- (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).
- (²) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended by Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005 (OJ 2005 L 201, p. 3).

**Action brought on 24 December 2009 — TF1 and Others
v Commission**

(Case T-520/09)

(2010/C 80/51)

Language of the case: French

Parties

Applicants: Télévision française 1 (TF1) (Boulogne Billancourt, France), Métropole télévision (M6) (Neuilly-sur-Seine, France), Canal + SA (Issy-Les-Moulineaux, France) (represented by: J.-P. Hordies and C. Smits, lawyers)

Defendant: European Commission

Form of order sought

— Annul the decision of the European Commission of

1 September 2009 in State Aid Case C 27/09 (ex N 34/A/09 and N 34/B/09) — Budgetary grant in favour of France Télévisions (2010-2012) in so far as it decides to deem the budgetary grant notified of EUR 450 million for 2009, in favour of France Télévisions, compatible with the EC Treaty under Article 86(2) thereof;

- Order the Commission to open the formal investigation procedure into the aid, laid down in Article 108(2) TFEU;
- Order the Commission to pay all the costs of the case.

Pleas in law and main arguments

The present action seeks the annulment of Decision C(2009) 6693 final of 1 September 2009, issued by the Commission following the procedure laid down in Article 88(3) EC (now Article 108 TFEU), by which the Commission deemed a budgetary grant, of a maximum amount of EUR 450 million for 2009 in favour of France Télévisions, compatible with the common market. The applicants request, against that background, that the formal investigation procedure be opened in accordance with Article 108(2) TFEU.

In support of their claim, the applicants put forward a single plea alleging that there were serious difficulties in the face of which the Commission was required to open the formal investigation procedure laid down in Article 88(2) EC (now Article 108(2) TFEU) and to invite interested parties to make observations.

The applicants assert that there were indications of serious difficulties resulting, on the one hand, from the circumstances of the preliminary investigation procedure and, on the other, from the content of the contested decision.

The excessive duration of the preliminary investigation procedure, the conduct of the procedure and the amount of the disputed funding are such as to show that there are serious difficulties concerning the circumstances of the preliminary investigation procedure.

The existence of indications of serious difficulties concerning the content of the contested decision is based on two factors. Firstly, it arises from the insufficient level of information, or even incorrect information, held by the Commission at the time of adoption of the contested decision and, secondly, from the fact that it was impossible for the Commission to conclude that the aid was compatible without an in-depth analysis, having regard to the structural concerns of over-compensation in the present case.