

— Order the Council to pay the costs.

*Defendant:* European Joint Undertaking for ITER and the Development of Fusion Energy

### Pleas in law and main arguments

The applicant seeks annulment of Council Regulation (EU) No 1284/2009 of 22 December 2009 imposing certain specific restrictive measures in respect of the Republic of Guinea <sup>(1)</sup> in so far as the applicant is included on the list of natural or legal persons, entities or bodies whose funds and economic resources are frozen under Article 6 of that regulation.

In support of his action, the applicant raises three pleas in law alleging:

- a manifest error of assessment in including the applicant on the list of natural or legal persons entities or bodies whose funds and economic resources are frozen;
- an infringement of Article 215(3) TFEU since the contested regulation does not contain any legal guarantees, in particular procedural guarantees;
- an infringement of the Charter of Fundamental Rights of the European Union in so far as the contested regulation infringes, (i) the principle of non-discrimination by maintaining the applicant's name on the list of persons sanctioned because of social background, (ii) his rights of defence in that it does not provide for any procedure to inform the applicant of the evidence against him, (iii) the right to an effective judicial remedy in that the Council did not inform the applicant of his rights of appeal, and (iv) the applicant's right to property.

<sup>(1)</sup> OJ 2009 L 346, p. 26.

### Action brought on 15 July 2010 — Babcock Noell v European Joint Undertaking for ITER and the Development of Fusion Energy

(Case T-299/10)

(2010/C 234/92)

*Language of the case: English*

### Parties

*Applicant:* Babcock Noell GmbH (Würzburg, Germany) (represented by: M. Werner and C. Ebrecht, lawyers)

### Form of order sought

- declare void the decisions of the defendant of 1 July 2010 in the procurement procedure F4E-2009-OPE-053 (MS-MG) to eliminate the applicant's tenders — four separate offers for LOTs A, B, C and D — from the procedure;
- declare void the decision of the defendant of 2 July 2010 in the procurement procedure F4E-2009-OPE-053 (MS-MG) to award the contract to the winning tenderer;
- order the defendant to cancel the tender procedure F4E-2009-OPE-053 (MS-MG) and to organise a fresh tender procedure for the supply of ITER Toroidal Field Coils Winding Packs;
- order the defendant to bear the costs.

### Pleas in law and main arguments

In support of its claims, the applicant puts forward seven pleas in law.

First, it argues that the decisions eliminating the applicant's bids from the procedure for non-compliance with the tender specifications are in breach of the principle of equal treatment and contain a manifest error of assessment, given that the bids did not contain substantial modifications ('45 deviations') to the model contract, as alleged by the defendant, but in fact only a list containing several proposals of issues to be negotiated. Furthermore, the applicant contends that the defendant breached the principles of good administrative practice and transparency in taking these decisions.

Second, the applicant submits that the contested decisions are in breach of the general principle of equal treatment of all tenderers given that the defendant, in the course of the tender procedure, did not remedy the fact that the winning tenderer had a significant information advantage when formulating its tender, as a result of carrying out works for the defendant and other entities prior to the procedure. Furthermore, it claims that the contested decisions are in breach of the transparency

principle, as the defendant did not make available to the applicant all information relating to the circumstances and the factual backgrounds for its decision not to reveal relevant information for the assessment of the existence of an information advantage of the winning tenderer.

Third, the applicant argues that the contested decisions are in breach of Article 84 (a) of the Financial Regulation <sup>(1)</sup>, given that the winning tenderer was subject to a conflict of interest with regard to the contract to be awarded.

Fourth, the applicant claims that the contested decisions are in breach of the provisions in Articles 93 and 100(2) (h) of the Implementing Rules <sup>(2)</sup>, given that the decision of the defendant to award the contracts in the tender procedure F4E-2009-OPE-053 (MS-MG) were taken following an open procedure, instead of a competitive dialogue procedure or negotiated procedure.

Fifth, it contends that the contested decisions are in breach of the provision of Article 23 (2) Directive 2004/18/EC <sup>(3)</sup> (which applies to this tender procedure by way of an analogy), given that the terms and conditions used in the model contract of the tender specifications in the procedure are contrary to the applicable Spanish law and qualify as having the effect of creating unjustified obstacles to the opening up of public procurement for competition.

Sixth, the applicant submits that by making use of vague and unclear requirements in the technical specifications, the defendant has breached the principle of transparency and has disregarded the provision in Article 116(1) of the Implementing Rules.

Finally, it claims that the defendant has breached the principles of transparency and equal treatment by applying award criteria in the tender specifications for the current procedure that are

vague and non-transparent and do not refer to the subject of the contract, but to the qualification and selection of the tenderer.

---

<sup>(1)</sup> Decision of 22 October 2007 of the Governing Board of the European Joint Undertaking for ITER and the development of Fusion Energy adopting the Financial Regulation

<sup>(2)</sup> Decision of 22 October 2007 the Governing Board of the European Joint Undertaking for ITER and the development of Fusion Energy adopting the Implementing Rules of the Financial Regulation (Implementing Rules)

<sup>(3)</sup> Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, OJ 2004 L 134, p. 114

---

#### **Order of the General Court of 29 June 2010 — Bavaria v Council**

**(Case T-178/06) <sup>(1)</sup>**

(2010/C 234/93)

*Language of the case: Dutch*

The President of the Fifth Chamber has ordered that the case be removed from the register.

---

<sup>(1)</sup> OJ C 224, 16.9.2006.

---

#### **Order of the General Court of 30 June 2010 — Torres v OHIM — Torres de Anguix (A TORRES de ANGUIX)**

**(Case T-286/07) <sup>(1)</sup>**

(2010/C 234/94)

*Language of the case: Spanish*

The President of the Sixth Chamber has ordered that the case be removed from the register.

---

<sup>(1)</sup> OJ C 235, 6.10.2007.