

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 Systemata Tilepikoinonion 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.

Further, the applicant submits that the defendant infringed the provisions of Article 100(2) of the financial regulation in the context of both lots, i.e. the obligation to state reasons by refusing to provide sufficient justification or explanation to the applicant. Especially, the characteristics and relative advantages of the tender selected were not adequately provided. Only a simple technical mark on the applicant's offer under each criterion as well as vague terms were provided, while for the winning tenderers it was only mentioned that its offer was considered as of higher quality.

Third, the applicant argues that the defendant did not ensure a fair treatment to all tenderers when inviting them to visit its premises since this exercise did not allow them to compete in a fair manner against the contractor who finally won this call for tenders.

Finally, the applicant contends that by using criteria other than those allowed for in Article 138 of the financial regulation and by processing data which were not proposed by the applicant itself for award and by mixing selection and award criteria and not using criteria linked to the economic advantage of the offer, the defendant infringed Article 97 of the financial regulation and Article 138 of the implementing rules.

⁽¹⁾ OJ 2009/S 217-312293

⁽²⁾ 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)

Action brought on 20 September 2010 — ClientEarth and Others v Commission

(Case T-449/10)

(2010/C 346/90)

Language of the case: English

Parties

Applicants: ClientEarth (London, United Kingdom), Transport & Environment (Brussels, Belgium), European Environmental Bureau (Brussels, Belgium) and BirdLife International (Cambridge, United Kingdom) (represented by: S. Hockman, QC)

Defendant: European Commission

Form of order sought

— annul the contested decision of 20 July 2010, the statutory negative reply under Article 8(3) of Regulation No

1049/2001⁽¹⁾, by which the Commission withheld from the applicant certain documents containing environmental information;

— order the Commission to provide access to all requested documents identified in the course of its review of the 2 April 2010 application and in the confirmatory application of 8 June 2010 unless protected under absolute exception in Article 4(1) of Regulation No 1049/2001, without delay or redaction; and

— order the defendant to pay the applicant's costs, pursuant to Article 87 of the Rules of procedure of the General Court, including the costs of any intervening party.

Pleas in law and main arguments

By means of the present application, the applicants seek, pursuant to Article 263 TFUE, the annulment of the Commission's implied decision, rejecting the applicants' request of the access to certain documents containing environmental information relating to greenhouse gas emissions resulting of production of biofuels as established or held by the Commission in the framework of the elaborating of a report foreseen in Article 19(6) of Directive 2009/28/EC⁽²⁾.

In support of their application the applicants put forward the following pleas in law.

First, they argue that the Commission has infringed Articles 7(3) and 8(2) of Regulation No 1049/2001 since it has failed to provide detailed reasons for requesting the extensions as granted on 27 April 2010 and 29 June 2010.

Second, the applicants submit that the Commission has infringed Articles 7(1) and 8(1) of Regulation No 1049/2001 since it has failed to provide detailed reasons for withholding each document. On 20 July 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission refused to release the responsive documents and provided no detailed reasons for withholding them as required under the regulation and case-law.

Third, the applicants contend that the defendant has violated Article 4 of Regulation (EC) No 1049/2001 since it has failed to carry out a concrete, individual assessment of the content of each document. On or before 20 July 2010, the date of expiration of the time-limit prescribed in the regulation, the Commission failed to perform, or make known, a concrete, individual assessment and determine whether the documents or any portion thereof fall under an exception to the general rule that all documents should be made accessible.