

**Judgment of the General Court of 16 September 2013 —
Ecoceane v EMSA**

(Case T-518/09) ⁽¹⁾

(Public service contracts — Tendering procedures — Operation of stand-by oil spill recovery vessels — Rejection of a tenderer's bid — Obligation to state reasons — Equal treatment — Transparency — Manifest error of assessment — Non-contractual liability)

(2013/C 325/36)

Language of the case: French

Parties

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

Defendant: European Maritime Safety Agency (EMSA) (represented by: J. Menze, Agent, assisted by J. Stuyck, lawyer)

Re:

Application for (i) annulment of EMSA's decision of 28 October 2009 rejecting the tender submitted by the applicant in the tendering procedure EMSA/NEG/1/2009, relating to the conclusion of public service contracts for stand-by oil spill recovery vessels (Lot No 2: Atlantic/Channel), and of the decision awarding the contract to another tenderer; and (ii) damages.

Operative part of the judgment

The Court:

1. Dismisses the action;
2. Orders Ecoceane to bear its own costs and to pay those incurred by the European Maritime Safety Agency (EMSA).

⁽¹⁾ OJ C 80, 27.3.2010.

**Judgment of the General Court of 16 September 2013 —
ATC and Others v Commission**

(Case T-333/10) ⁽¹⁾

(Non-contractual liability — Health policy — Safeguard measures in crisis situation — Protection measures in relation to highly pathogenic avian influenza in certain third countries — Prohibition on imports of wild birds captured in their natural habitat — Sufficiently serious breach of rules of law conferring rights on individuals — Manifest and grave disregard of the limits on the discretion — Directives 91/496/EC and 92/65/C — Precautionary principle — Duty of diligence — Proportionality)

(2013/C 325/37)

Language of the case: Dutch

Parties

Applicants: Animal Trading Company (ATC) BV (Loon op Zand, Netherlands); Avicentra NV (Malle, Belgium); Borgstein Birds and Zoofood Trading VOF (Wamel, Netherlands); Bird Trading Company Van der Stappen BV (Dongen, Netherlands); New Little Bird's srl (Anagni, Italy); Vogelhuis Kloeg (Zevenbergen, Netherlands) and Giovanni Pistone (Westerlo, Belgium) (represented by: M. Osse and J. Houdijk, lawyers)

Defendant: European Commission (represented by: F. Jimeno Fernández and B. Burggraaf, acting as Agents)

Re:

Action for compensation in respect of the harm allegedly suffered by the applicants as a result of the adoption first, of Commission Decision 2005/760/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third countries for the import of captive birds (OJ 2005 L 285, p. 60), as extended, and of Commission Regulation (EC) No 318/2007 of 23 March 2007 laying down animal health conditions for imports of certain birds into the Community and the quarantine conditions thereof (OJ 2007 L 84, p. 7).

Operative part of the judgment

The Court:

1. The European Union is ordered to compensate for the loss suffered by the Animal Trading Company (ATC) BV, Avicentra NV, Borgstein Birds and Zoofood Trading vof, Bird Trading Company Van der Stappen BV, New Little Bird's srl, Vogelhuis Kloeg and Mr Pistone Giovanni as a result of the adoption and implementation by the European Commission of: (i) Commission Decision 2005/760/EC of 27 October 2005 concerning certain protection measures in relation to highly pathogenic avian influenza in certain third countries for the import of captive birds; (ii) Commission Decision 2005/862/EC of 30 November 2005 amending Decisions 2005/759/EC and 2005/760/EC relating to measures to combat avian influenza in birds other than poultry; (iii) Commission Decision 2006/79/EC of 31 January 2006 amending Decisions 2005/759/EC and