

Action brought on 17 February 2014 — Alesa v Commission**(Case T-99/14)**

(2014/C 102/62)

*Language of the case: Italian***Parties**

Applicant: Alesa Srl (Chieti, Italy) (represented by: N. Giampaolo, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- As an interim precautionary measure, order the suspension of the award by the European Commission on behalf of the People's Republic of China (the beneficiary) of Contract No DCI-ASIE/2013/329-453, published on 3 December 2013, with a value of EUR 9 304 400, to the consortium led by GIZ GmbH;
- As regards the substance, allow the action on the grounds set out in the application and, as a result, annul the award by the European Commission on behalf of the People's Republic of China of Contract No DCI-ASIE/2013/329-453, published in the TED (Tenders Electronic Daily web portal) on 3 December 2013, with a value of EUR 9 304 400, to the consortium led by GIZ GmbH;
- As regards the substance, on the basis of the various pleas raised in the application, order the European Commission to pay compensation in the amount of EUR 900 000, or whatever sum the Court considers to be fair and equitable relief, for the damage suffered by the applicant on its own account and on account of the members of the SHAREWICH Consortium;
- Order the European Commission to pay the costs;
- Within the meaning and for the purposes of Article 277 TFEU, assess the lawfulness/unlawfulness and applicability/inapplicability of Article 266.1 of the Implementing Rules for the Financial Regulation and Article 2.4.13 of the 2013 PRAG (Practical Guide to Contract Procedures for EU External Actions) by reference to the other rules on the management and award of public contracts, in so far as those provisions — regardless of the value of the contract and whether it is above the threshold established by the law in force — allow the contracting authority, after it has cancelled the tendering procedure, to enter into negotiations with one or more tenderers directly, without giving prior notification to the other tenderers which are not party to such negotiations.

Pleas in law and main arguments

This action has been brought against the Contract Award by which the European Commission has awarded Contract No DCI-ASIE/2013/329-453 to the GIZ GmbH Consortium in the context of Public Notice of Invitation to Tender No 2012/S 223-366462 regarding the technical assistance to be provided to the Ministry of Housing and Urban-Rural Development (MOHURD) of the People's Republic of China in transferring European best practice with regard to urbanisation policies and reducing greenhouse gas emissions ('Sustainable urbanisation — Europe-China eco-cities link').

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging infringement, misinterpretation and misapplication of Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012, and *ultra vires* exercise of the discretion granted to the European Commission — including all its bodies and delegated authorities — in its role as Contracting Authority;

2. Second plea in law, alleging infringement, misinterpretation and misapplication of Article 2.4.13 of the 2013 Practical Guide to Contract Procedures for EU External Actions, and *ultra vires* exercise of the discretion granted to the European Commission — including all its bodies and delegated authorities — in its role as Contracting Authority;
3. Third plea in law, alleging infringement, misinterpretation and misapplication of the principles of transparency referred to in Article 15 TFEU, Article 298 TFEU and Articles 102(1) (Principles applicable to public contracts) to 112(1) (Principles of equal treatment and transparency) of Regulation (EU, Euratom) No 966/2012, and *ultra vires* exercise of the discretion granted to the European Commission — including all its bodies and delegated authorities — in its role as Contracting Authority;
4. Fourth plea in law, alleging infringement, misinterpretation and misapplication of the fundamental principles laid down by Article 2 of Directive 18/2004/EC and by the other specific references made in that directive to legislation relating to the management and award of public service contracts, and *ultra vires* exercise of the discretion granted to the European Commission — including all its bodies and delegated authorities — in its role as Contracting Authority.

Action brought on 19 February 2014 — Italy v Commission

(Case T-122/14)

(2014/C 102/63)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: S. Fiorentino, avvocato dello Stato, and G. Palmieri, Agent)

Defendant: European Commission

Form of order sought

The Italian Republic claims that the General Court should:

- annul the contested decision;
- order the Commission to pay the costs.

Pleas in law and main arguments

The present action is brought against Commission decision No C(2013) 8681 final of 9 December 2013, by which, in compliance with the judgment of the Court of Justice of 17 November 2011 in Case C-496/09, the Commission asked the Italian Republic to make a penalty payment in the amount of EUR 6 252 000.

The contested decision refers to the second six-month period of delay, namely the period from 17 May to 17 November 2012.

The Italian Government puts forward the following pleas in law:

1. First plea: infringement of Article 260(1) TFEU and the second subparagraph of Article 260(3) TFEU, and failure to comply with the above judgment with respect to the debt owed by undertakings which have 'have entered into an arrangement with creditors' or are in 'supervised administration'.

The Italian Republic argues in that regard that the decision does not deduct from the aid remaining due at the end of the six-month reference period the debt, owed by the debtor undertakings which are bankrupt or subject to bankruptcy proceedings, which has come about as a result of related proceedings, even though, according to that Government, the Italian Republic had sought recovery of that debt with due diligence and that debt should therefore be excluded from the amount of aid owed under that judgment.

2. Second plea: infringement of Article 14 of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1), and also the misapplication of Article 11 of Commission Regulation (EC) No 794/2004 of 21 April 2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 2004 L 140, p. 1).