

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).

The Italian Republic argues in that regard that the decision requires the Italian authorities to add, to the sums owed by the undertakings in repayment of the State aid, interest at a compound rate, as provided for in Article 11 of Regulation No 794/2004. The Italian Government contests that requirement, arguing that, in the light of the case-law of the Court of Justice of the European Union (and, in particular, the judgment in Case C-295/07 *Commission v Département du Loiret and Scott SA*), interest calculated in such a manner cannot be applied in relation to recovery decisions notified prior to the entry into force of Regulation No 794/2004, still less in relation to decisions notified prior to the publication of the Commission Communication on the interest rates to be applied when aid granted unlawfully is recovered (OJ 2003 C 110, p. 21).
