

Pleas in law and main arguments

By way of the present application, the applicant challenges the Commission decision notified to the latter by letter dated 2 July 2008 by which the Commission refused to disclose the names of the companies and of the individuals involved in the so-called 'Eximo' case which are cited in the documents disclosed to the applicant by the Commission in reply to its initial application.

The applicant seeks to annul the contested decision on the basis of the following grounds:

First, according to the applicant, the contested decision is vitiated by a manifest error of law in so far as the Commission wrongly interpreted and relied on the exceptions provided in Article 4(1)(b), 4(2) first indent of Regulation (EC) No 1049/2001⁽¹⁾ without carrying out an assessment of fact or setting out the reasons for its refusal. In addition, the applicant submits that the Commission made an error of appreciation of the facts in finding that the commercial interests of the companies concerned and the privacy and the integrity of the individuals involved would have been seriously undermined should their names be disclosed. Furthermore, the applicant contends that, by opting for an extensive interpretation of the term 'protection of commercial interests' and 'protection of privacy and integrity of the individual', the Commission violated the principle of the widest possible access to documents as set out in Article 1(a) of Regulation (EC) No 1049/2001.

Second, the applicant submits that the contested decision infringed Article 4(4) of Regulation (EC) No 1049/2001 in so far as the Commission failed to grant the applicant full access to a document which was already publicly available.

Third, the applicant submits that the Commission violated the obligation to state reasons in accordance with Article 253 EC, by failing to inform the applicant on the grounds on which it based its decision and by simply referring to the exceptions set out in Article 4(4) of Regulation (EC) No 1049/2001.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

Action brought on 11 September 2008 — Elliniki Nafpigokataskevastiki and Others v Commission

(Case T-384/08)

(2008/C 301/82)

Language of the case: English

Parties

Applicants: Elliniki Nafpigokataskevastiki AE Chartofylakeiou (Skaramangas, Greece) Howaldtswerke-Deutsche Werft GmbH

(Kiel, Germany) and ThyssenKrupp Marine Systems AG (Hamburg, Germany) (represented by: U. Soltész, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Order the annulment of Article 16 of the decision of the Commission of 2 July 2008 on the Measures No C 16/2004 (ex NN 29/2004, CP 71/2002 and CP 133/2005) implemented by Greece in favour of Hellenic Shipyards; and
- Order the Commission to pay the applicant's costs of the present proceedings.

Pleas in law and main arguments

By means of their application the applicants seek partial annulment of Commission Decision C(2008) 3118 final, of 2 July 2008, concerning sixteen measures implemented by the Greek State in favour of Hellenic Shipyards SA ('HSY') and, in particular, annulment of Article 16 of the said decision according to which the Commission decided that the Indemnification Guarantee granted by HSY's previous owner, Hellenic Bank of Industrial Development ('ETVA'), to the consortium⁽¹⁾ that acquired HSY through a share purchase agreement (Howaldtswerke-Deutsche Werft⁽²⁾ and Ferrostaal), in the event of state aid recovery from HSY, constitutes illegal state aid and should be stopped immediately.

The applicants claim that the Commission incorrectly considered that the Indemnification Guarantee in the privatisation agreement was given at a time when ETVA was under state control. According to the applicants, the Indemnification Guarantee was only validly agreed after ETVA's privatisation and therefore constituted a measure negotiated between private parties, not imputable to the Greek State and therefore cannot be regarded as state aid.

Moreover, the applicants submit that the Commission's allegation that the two separate clauses in the addendum to the purchase sharing agreement constituted one overall mechanism through which HSY would benefit is erroneous. In fact, the applicants submit that the two guarantees were granted independently of each other. In addition, the applicants contend that the Commission wrongly considered that HSY benefited from the Indemnification Guarantee since, having regard to the facts of the case, only Piraeus Bank could be considered to have benefited from it.

The applicants argue that the Commission was wrong in considering that an economic advantage was conferred on HSY by virtue of the Indemnification Guarantee which (i) is a standard term under private law, (ii) was given after a duly carried out assessment and (iii) conforms to the conduct of a private vendor.

Further, it is submitted that the Commission misapplied Article 88(2) EC and Article 14(1) of Regulation (EC) No 659/1999 in targeting Elliniki Nafpigokataskevastiki, which was not the beneficiary of the aid, by ordering it to stop the Indemnification Guarantee.

Also, the applicants claim that the Commission's argument alleging circumvention of the *effet utile* of recovery wrongly relies on the assumption that circumvention occurs by the simple granting of the Indemnification Guarantee.

Finally, the applicants submit that the Commission misapplied Article 296 EC in that it does not allow HSY to carry on a certain degree of civil activities which are of an ancillary nature in order to sustain the operation of the whole shipyard.

⁽¹⁾ This consortium founded Elliniki Nafpigokataskevastiki in order to harbour the holding in HSY.

⁽²⁾ HDW is wholly owned by ThyssenKrupp Marine Systems which also acquired Ferrostaal's shares in Elliniki Nafpigokataskevastiki in 2005.

Action brought on 1 September 2008 — Evropaïki Dynamiki v Office for Official Publications of the European Communities

(Case T-387/08)

(2008/C 301/83)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, lawyer)

Defendant: Office for Official Publications of the European Communities

Form of order sought

— Annul the decision of the Office for Official Publications of the European Communities (OPOCE) to reject the bid of the applicant, filed in response to open Call for Tender AO 10185 for 'Computing Services — maintenance of the SEI-BUD/AMD/CR systems and related services' (OJ 2008/S 43-058884) communicated to the applicant by

letter dated 20 June 2008 and to award the contract to the successful contractor;

- Order OPOCE to pay the applicant's damages suffered on account of the tendering procedure in question in the amount of EUR 1 444 930;
- Order OPOCE 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 to reject its bid submitted in response to a call for an open tender AO 10185 regarding the 'Computing Services — maintenance of the SEI-BUD/AMD/CR systems and related services' and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages on account of the tendering procedure.

In support of its claims the applicant argues that by awarding the aforementioned tender to another bidder the defendant failed to comply with its obligations foreseen in the financial regulation ⁽¹⁾, its implementing rules and Directive 2004/18/EC ⁽²⁾ as well as with the principles of transparency, equal treatment and proportionality.

The applicant moreover submits that the contracting authority infringed its obligation, foreseen in the above mentioned applicable rules, to sufficiently state reasons for its decision. Furthermore, the applicant alleges that the contracting authority used the criteria that were not expressly included in the call for tender, mixed evaluation with award criteria, therefore infringing the tender specifications, and committed several manifest errors of assessment which resulted in the rejection of the applicant's bid.

The applicant requests, hence, that the decision to reject its bid and to award the contract to the successful tenderer be annulled and that the defendant is ordered to pay, in addition to the applicant's legal expenses related to the proceedings, the damages suffered by the applicant on account of the tendering procedure.

⁽¹⁾ 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 L 248, p. 1).

⁽²⁾ 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 L 134, p. 114).