

Form of order sought

- Annul the refusal of the European Commission to grant full or partial access to its opinion and observations issued in response to notification 2011/673/f relating to the content and submission conditions of annual declarations of nano-particle substances, made by the French Republic under Directive 98/34/EC ⁽¹⁾;
- Order the European Commission 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

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

1. First plea in law, alleging errors of law and manifest errors of assessment and lack of reasoning in the application of Article 4(2) third indent of Regulation (EC) No 1049/2001 ⁽²⁾ and Article 6(1) of Regulation (EC) No 1367/2006 ⁽³⁾, as:

— The procedure under Directive 98/34/EC does not fall within the Article 4(2) third indent exception to the general principle of disclosure in the Regulation (EC) No 1049/2001;

— Article 4(2) third indent of Regulation (EC) No 1049/2001 and Article 6(1) of Regulation (EC) No 1367/2006 were misapplied in finding that disclosure of the requested document would specifically and effectively undermine the Commission's interest in the procedure under Directive 98/34/EC.

2. Second plea in law, alleging error of law, manifest error of assessment and lack of reasoning in the application of the overriding public interest test as required by Article 4(2) third indent of Regulation (EC) No 1049/2001 and Article 6(1) of Regulation (EC) No 1367/2006, as:

— In this case, Article 6(1) of Regulation (EC) No 1367/2006 reinforces the overriding public interest. The contested decision fails to take into account the overriding public interest in the disclosure of the requested document, and contains an error of law, manifest error of assessment and lack of reasoning in the application of the two legal provision mentioned above.

3. Third plea in law, alleging error of law, manifest error of assessment and lack of reasoning in the application of Article 4(6) of Regulation (EC) No 1049/2001, as:

— The contested decision lacks any reasoning and is vitiated by a manifest error of assessment in not granting partial access in application of Article 4(6) of Regulation (EC) No 1049/2001.

⁽¹⁾ Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37)

⁽²⁾ 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)

⁽³⁾ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264 p. 13)

Action brought on 11 September 2012 — Intrasoft International v Commission**(Case T-403/12)**

(2012/C 343/31)

*Language of the case: English***Parties**

Applicant: Intrasoft International SA (Luxembourg, Luxembourg) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of the Delegation of the European Union to the Republic of Serbia of 10 August 2012 (ref.: RH(2012)3471), as well as the implicit rejection of the applicant's complaint of 10 August 2012 against such decision, so that the applicant will be allowed to participate in the subsequent stages of the tender;

— Order the defendant to pay the costs of the present application.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the terms of reference and the principle of good administration. More specifically, the applicant sustains that the additional information-clarifications given by the contracting authority to all tenderers following the tender procedure completed the terms of reference, formed part of the legal framework that governs the tender in question and subsequently was binding on all parties, the contracting authority included. Such terms have in the case at hand been infringed by the defendant.

2. Second plea in law, alleging an infringement of Article 94 of the Financial Regulation ⁽¹⁾, as:

- The applicant was excluded from the tendering procedure on the ground of conflict of interest without having been given the opportunity to prove and support evidence that there was not such a case;
- The administration failed to assess and substantiate that the previous involvement of the applicant in another tender could have an impact on the tender in question.

⁽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 2002 L 248, p. 1)

Action brought on 12 September 2012 — Toshiba Corporation v Commission

(Case T-404/12)

(2012/C 343/32)

Language of the case: English

Parties

Applicant: Toshiba Corporation (Tokyo, Japan) (represented by: J. MacLennan, Solicitor, A. Schulz and S. Sakellariou, lawyers)

Defendant: European Commission

Form of order sought

- Annul the Commission decision of 27 June 2012 in Case COMP/39.966 — *Gas Insulated Switchgear* — *fin*es;
- Alternatively, reduce the fine as the General Court finds appropriate; and, in any event,
- Award the applicant its costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breached the principle of good administration and the principle of proportionality by prematurely adopting its decision of 27 June 2012 in Case COMP/39.966 — *Gas Insulated Switchgear* — *fin*es, before the European Court of Justice handed down its judgment in Case C-498/11 P *Toshiba Corporation v European Commission*.

2. Second plea in law, alleging that the Commission breached Toshiba's rights of defence by not issuing a Statement of Objections before the adoption of the decision of 27 June 2012 in Case COMP/39.966 — *Gas Insulated Switchgear* — *fin*es; and by not addressing in the Letter of Facts an important element of the fine calculation imposed by the said decision.

3. Third plea in law, alleging that the Commission infringed the principle of equal treatment in treating the applicant differently to the European manufacturers of Gas Insulated Switchgear when basing the applicant's fine on TM T&D's starting amount rather than the applicant's turnover;

4. Fourth plea in law, alleging that the Commission failed to provide adequate reasoning when setting TM T&D's starting amount.

5. Fifth plea in law, alleging that the Commission infringed the principle of equal treatment in failing to differentiate in the level of culpability of Toshiba compared to the European manufacturers of Gas Insulated Switchgear.

Action brought on 12 September 2012 — Mitsubishi Electric v Commission

(Case T-409/12)

(2012/C 343/33)

Language of the case: English

Parties

Applicant: Mitsubishi Electric Corp. (Tokyo, Japan) (represented by: R. Denton, J. Vyavaharkar and R. Browne, Solicitors, and K. Haegeman, lawyer)

Defendant: European Commission

Form of order sought

- Annul Commission decision C(2012) 4381 final of 27 June 2012 amending Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and Article 53 of the EEA Agreement (Case COMP/39.966 — *Gas Insulated Switchgear* — *fin*es), in so far as it concerns the applicant; or, in the alternative,
- Substantially reduce the fine imposed on the applicant therein; and
- Order the defendant to pay its own costs and the applicant's costs in connection with the proceedings.