

— The applicant claims in that regard that, in order to be admitted to the tendering procedure it was necessary to satisfy the technical capacity requirements referred to in point II.2.3, which required, on pain of exclusion, the complete construction — directly by the tenderers — of at least two combined power plants with a capacity of at least 8 MW. The successful tenderer should have been excluded because it did not satisfy those minimum requirements set out in tendering procedure rules.

Second plea: infringement of Article 149 of Regulation No 1268/2012; infringement of Article 113 of Regulation No 966/2012 ⁽²⁾; infringement of Directive 2004/18/EC ⁽³⁾ (recital 39 thereto); together with the existence, in the present case, of a misuse of powers.

— The applicant claims in that regard that the assessment and the award of the contract are unlawful in so far as the successful tenderer was not entitled to the score awarded to it, since the evaluation of the technical offer, on the basis of the criteria laid down by the Commission, must necessarily be based on the effective output of the plant and not on a unilateral declaration made by the tenderer. Consequently, there was breach of transparency and of equal treatment with respect to the tendering procedure.

Third plea: infringement of Article 112 of Regulation No 966/2012; breach of the principle of the secrecy of tenders, referred to in Article 111 of Regulation No 966/2012; infringement of Articles 157 and 159 of Regulation No 1268/2012; together with the existence, in the present case, of a misuse of powers.

— The applicant claims in that regard that the tendering procedures for award of the contract were carried out in a single sitting through the concurrent examination of administrative documents for the purpose of determining admission to the tendering procedure, technical offers and economic offers. Such a *modus operandi* is incompatible with the principle of the secrecy of tenders and the principle of the separation of tenders.

Fourth plea: breach of the principles of equal treatment and transparency; infringement of Articles 15 and 298 of the Treaty; infringement of Article 102 of Regulation No 966/2012; infringement of Article 6 of Directive 2004/18/EC; together with the existence, in the present case, of a misuse of powers.

— The applicant claims in that regard that, following the decision refusing its tender, the Commission provided only the grid of the scores awarded and then unlawfully refused access to the documentation requested, even following the confirmatory application submitted by the applicant pursuant to Article 7 et seq. of Regulation No 1049/2001 ⁽⁴⁾.

Fifth plea: breach of the principles of equal treatment and transparency; infringement of Articles 157 and 158 of Regulation No 1268/2012; together with the existence, in the present case, of a misuse of powers.

— The applicant claims in that regard that, in breach of Article 157 of Regulation No 1268/2012, the failure to provide a copy of the evaluation reports and of the final award decisions prevented the applicant from gaining full knowledge of the preconditions laid down in the rules referred to.

⁽¹⁾ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ 2012 L 362, p. 1).

⁽²⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ 2012 L 298, p. 1).

⁽³⁾ 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 2004 L 134, p. 114).

⁽⁴⁾ 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 3 June 2014 — Italy v Commission

(Case T-384/14)

(2014/C 235/43)

Language of the case: Italian

Parties

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

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul Commission Decision C (2014) 2008 of 4 April 2014, notified on 7 April 2014, which excludes from European Union financing certain expenditure incurred by the Member States, and by Italy in particular, under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD).

Pleas in law and main arguments

The applicant raises three pleas in law:

1. First plea in law: failure to observe Community principles and insufficient investigation.
 - In that regard, the applicant claims that, in the contested decision, the Commission made a financial correction in response to some shortcomings observed during an on-site inspection which took place only in the Lazio and Abruzzo regions. The applicant contests the idea that the results of that inspection can be extrapolated beyond those regions and that the correction can be quantified at 5 %, since in reality the various regions of Italy are extremely diverse and in any event only one paying agency (the Agenzia per le Erogazioni in Agricoltura) (the Agricultural Payments Agency) (AGEA) was involved.
2. Second plea in law: infringement of Articles 43 and 48 of Regulation No 1782/2003 ⁽¹⁾.
 - In its decision, the Commission asserted that the Italian State had misapplied the legislation on special rights, stating that a risk to the Fund had come about. The applicant submits that Articles 43 and 48 of Regulation No 1782/2003 do not specify a particular method for the redistribution of special rights as regards the cases investigated by the Commission, and that the methodology adopted in Italy not only fully complies with that legislation, but, what is more, does not in itself represent a particular risk to the Fund.
3. Third plea in law: failure to observe the general principles of financial correction and compliance with the recognition criteria, and failure to provide an adequate statement of reasons.
 - In its decision, the Commission made a correction in relation to the operational shortcomings attributable to the Agenzia della Regione Basilicata per le Erogazioni in Agricoltura (Basilicata Region Agricultural Payments Agency) (ARBEA), the paying agency whose recognition was withdrawn through the administration's decision of 12 May 2010 with effect from 16 October 2010, the date when ARBEA's competences were taken over by AGEA. The applicant criticises the Commission's way of proceeding — that is, its extending to 2010 the correction previously applied to the financial years 2007-2009 on the assumption that the risks previously established were still present and adopting the same percentage — and also criticises its application of that correction to the period between the date on which recognition was withdrawn and the date on which AGEA took over ARBEA's duties.

⁽¹⁾ Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001.

Order of the General Court of 14 May 2014 — Seatech International and Others v Commission

(Case T-500/13) ⁽¹⁾

(2014/C 235/44)

Language of the case: French

The President of the Fourth Chamber has ordered that the case be removed from the register.

⁽¹⁾ OJ C 377, 21.12.2013.