

Pleas in law and main arguments

In support of the action, the applicants rely on five pleas in law.

1. First plea in law, alleging the existence of errors in the evaluation formula, contradictory instructions to the tenderers, infringement of the instructions to tenderers, infringement of the Tender specifications, infringement of the principles of Transparency and Good Administration.
 - The applicants submit that the evaluation formula, as presented in the Technical Specifications contained a number of errors. In addition, the Evaluation Committee used a different formula than the one announced, without informing the tenderers and used values from a table other than the one announced in the answers to the questions of the tenderers.
2. Second plea in law, alleging an infringement of Article 110 of the Financial Regulation and 149 of the Delegated Regulation — The formula used does not lead to the award of the contract to the tender offering the best value for money.
 - The applicants submit that the table, from which the Evaluation Committee extracted the values in order to apply the evaluation formula, does not correspond to the way the contract is expected to be executed. As a result the elements taken into consideration do not correspond to the real needs of the European Parliament, which will necessarily lead to the award of the cascade contracts to tenderers that do not offer the best value for money for the needs thereof.
3. Third plea in law, alleging vagueness and ambiguity of the Tender Specification.
 - The applicants submit that the European Parliament introduces through its letters an interpretation of the Technical Specifications which is contradictory with other sections of the same specifications, the answers of its own services to the questions of the tenderers and the objectives of the contract awarded. As a result, the Technical Specifications can lead the tenderers to errors impeding them from elaborating their best pricing strategy and therefore submitting their best offer.
4. Fourth plea in law, alleging an infringement of the obligation to state reasons — of the right to an effective remedy and of an essential procedural requirement.
 - The applicants submit that the information communicated to them through the letters of the European Parliament after the announcement of the award of the contract in the disputed Call for Tenders does not constitute adequate motivation, since it is largely insufficient in order to permit to the applicants to apply the evaluation formula and verify the correct evaluation thereof. The European Parliament did not disclose fully the information taken into consideration in order to apply the evaluation formula, although the financial offer of the first cascade contractor was the deciding factor for the ranking of the applicants as second successful tenderer, since the applicants' offer was ranked largely first in the quality assessment of the tenders and only after the consideration of the price, the rank changed.
5. Fifth plea in law, alleging an infringement of the Tender Specifications and of Article 107 (1) (a) of the Financial Regulation.
 - The applicants submit that according to publicly available information, two companies participating in 'exclusion' lots including the first cascade contractor of Lot 3 have merged and therefore they cannot be awarded the above contracts. The above contractors dispose of an evident conflict of interest if they were indeed invited to execute the contract.

Action brought on 24 November 2014 — Red Lemon v OHIM — Lidl Stiftung (ABTRONICX2)

(Case T-776/14)

(2015/C 046/71)

Language in which the application was lodged: German

Parties

Applicant: Red Lemon Inc. (Hong Kong, China) (represented by: T. Wieland and S. Müller, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Lidl Stiftung & Co. KG (Neckarsulm, Germany)

Details of the proceedings before OHIM

Applicant for the trade mark at issue: the applicant

Trade mark at issue: the Community figurative mark including the word element 'ABTRONICX2' — Application No 8 534 943

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 4 September 2014 in Case R 2078/2013-1

Form of order sought

The applicant claims that the Court should:

- annul the contested decision and reject the opposition;
- order OHIM to pay the costs.

Plea in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009.

Appeal brought on 28 November 2014 by European Central Bank against the judgment of the Civil Service Tribunal of 18 September 2014 in Case F-26/12 Cerafogli v ECB

(Case T-787/14 P)

(2015/C 046/72)

Language of the case: English

Parties

Appellant: European Central Bank (represented by: E. Carlini and M. López Torres, agents, assisted by B. Wägenbaur, lawyer)

Other party to the proceedings: Maria Concetta Cerafogli (Rome, Italy)

Form of order sought by the appellant

The appellant claims that the Court should:

- annul the judgment of 18 September 2014, in Case F-26/12, *Cerafogli v ECB*;
- rule according to the appellant's pleas sought at first instance; and
- to award each party its own costs.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four pleas in law.

1. First plea in law, alleging an erroneous extrapolation of the *Grolsch* case-law to staff cases thereby misinterpreting the scope of the principle of effective judicial protection in the light of Article 47 of the Charter and the inadequacy of the grounds.
2. Second plea in law, alleging a failure to take account of the rights of defence of the institution, disregarding the purpose of the pre-litigation procedure, and a failure to take account of relevant facts and misinterpretation of the principle of legal certainty.