

Pleas in law and main arguments

The pleas in law and main arguments relied on by the applicant are those raised in Case T-17/15 *Italian Republic v Commission* (OJ 2015 C 81, p. 27).

Action brought on 19 June 2015 — *Impresa Costruzioni Giuseppe Maltauro v Commission*

(Case T-320/15)

(2015/C 254/25)

Language of the case: Italian

Parties

Applicant: Impresa Costruzioni Giuseppe Maltauro SpA (Vicenza, Italy) (represented by: M. Merola, M. Santacroce and M. Toniolo, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul in its entirety the contested decision, by which the Commission excluded Impresa Costruzioni Giuseppe Maltauro SpA from participation in all procedures for the award of contracts and grants financed by the general budget of the European Union, including procedure No JRC/IPR/2014/C.5/0003 RC published in OJ 2014/S 034-054569 and subsequent corrigenda, for a period of two years and ten months;
- order the Commission to pay the costs.

Pleas in law and main arguments

The exclusion procedure was initiated when the applicant participated in a restricted call for tender issued by the Joint Research Centre on 18 February 2014 for the construction of a new building on its Ispra site. The Commission was aware of certain irregularities on the part of the applicant.

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

1. First plea in law, alleging failure to conduct an investigation, misrepresentation of the facts and a consequential error in law consisting in failure to apply the derogation laid down in the final sub-paragraph of Article 106(1) of the Financial Regulation.
 - The applicant claims, in that regard, that the contested decision is vitiated by failure to conduct an investigation, misrepresentation of the facts and a consequent error in law, in so far as the final sub-paragraph of Article 106(1) of Regulation No 966/2012 was not applied in the present case. In particular, the Commission erred in failing to recognise that, in the present case, the criteria under Article 106(1)(b) of Regulation No 966/2012 were satisfied, and in failing properly to take into account the documentary evidence submitted by Impresa Costruzioni Giuseppe Maltauro SpA during the investigation for the purpose of demonstrating that it had adopted 'adequate measures' against Dr Maltauro.
2. Second plea in law, alleging that Article 106(1)(c) of the Financial Regulation is inapplicable.
 - The applicant claims, in that regard, in the alternative, that the contested decision is vitiated as a result of misrepresentation of the facts and failure to state reasons, in so far as the applicant was held liable for grave professional misconduct within the meaning of Article 106(1)(c) of Regulation No 966/2012. The documents concerning the judicial problems involving Dr Maltauro do not show that Impresa Costruzioni Giuseppe Maltauro SpA failed to fulfil its duties of diligence and contractual good faith, or that that company benefitted from the unlawful conduct imputed to its former Managing Director. There was therefore no evidence to support the view that Impresa Costruzioni Giuseppe Maltauro SpA was guilty of grave professional misconduct as cited in the ground for exclusion.

3. Third plea in law, alleging infringement of the *audi alteram partem* rule.
 - The applicant claims, in that regard, also in the alternative, that the contested decision is also vitiated owing to infringement of the *audi alteram partem* rule, since it is based on information which was not referred to by the Commission in its letter initiating the procedure, with regard to which Impresa Costruzioni Giuseppe Maltauro SpA was never given the opportunity to submit its comments. Accordingly, the applicant could not defend itself properly in relation to the evidence which ultimately proved to be decisive for the purposes of its exclusion from all procedures for the award of contracts and grants financed by the general budget of the European Union and the European Development Fund.
 4. Fourth plea in law, alleging infringement of the principle of proportionality in determining the exclusion period.
 - The applicant claims, in that regard, once again in the alternative, that the exclusion decision was adopted in breach of the principle of proportionality, in particular in so far as it sets the exclusion period at two years and ten months. That period is wholly unjustified, contrary to the spirit and purpose of the rules laid down in Regulation No 966/2012 and Regulation No 1268/2012, which govern grounds for exclusion, and clearly disproportionate, since the factors which could have had negative effects on the professional conduct of Impresa Costruzioni Giuseppe Maltauro SpA were eliminated by that company and there was no further reason for the Commission to fear financial losses or reputational harm.
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