

4. Fourth plea in law alleging failure to proceed to a specific and effective examination of potential partial access, in breach of the case-law cited.
5. Fifth plea in law alleging a manifest error of assessment regarding the existence of an overriding public interest, in breach of the principles in the case-law cited.

Action brought on 13 March 2017 — Post Telecom v EIB

(Case T-158/17)

(2017/C 144/73)

Language of the case: French

Parties

Applicant: Post Telecom SA (Luxembourg, Luxembourg) (represented by: M. Thewes, C. Saettel and T. Chevrier, lawyers)

Defendant: European Investment Bank

Form of order sought

The applicant claims that the General Court should:

- annul the decision of the European Investment Bank (EIB) contained in its letter of 6 January 2011, notifying the applicant of the rejection of the tender that it had submitted in the context of call for tenders OP-1305 entitled ‘Metropolitan area network and wide area network communication services for the European Investment Bank Group’, and the decision to award the contract to another tenderer;
- by way of one of the measures of organisation of procedure provided for in Article 89 of the Rules of Procedure of the General Court, or otherwise one of the measures of inquiry provided for in Article 91 of those rules, request the EIB to specify whether it has had any contact whatsoever with TELINDUS regarding the procurement procedure — whether before or after the submission of tenders — inter alia for the purposes of obtaining additional explanations as to its technical solution and, if appropriate, order it to produce every document exchanged in that regard; and order the production of every document from the procurement dossier in which the contacts that took place between the EIB and TELINDUS SA regarding the procurement dossier — whether before or after the submission of tenders — were recorded;
- order the European Investment Bank to pay to it damages of EUR 1 247 415,60 in respect of non-contractual liability;
- order the European Investment Bank to pay the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the principle of equal treatment and of transparency, in relation to the method of assessment provided for in the tender specifications.
2. Second plea in law, alleging failure to comply with the obligation to state reasons, or insufficient reasoning, so far as concerns, first, the appraisal of the successful tenderer’s bid, and, second, the appraisal of the bid submitted by the applicant.
3. Third plea in law, alleging a manifest error of assessment, disregard of the provisions of the tender specifications and infringement of the principle of equal treatment committed by the EIB, so far as concerns the appraisal of the successful tenderer’s bid, and in particular the evaluation of its bid under technical criterion No 1.

4. Fourth plea in law, alleging a substantive error, a manifest error of assessment, failure to comply with the tender specifications, infringement of the principle of proportionality and equal treatment and a misuse of powers allegedly committed by the EIB, so far as concerns the appraisal of the applicant's tender. This plea is divided into two parts:
- first part, alleging an error in the substantive findings of fact, or a manifest error of assessment, infringement of the tender specifications, a misuse of powers and infringement of the principle of proportionality;
 - second part, alleging a manifest error of assessment.

Action brought on 10 March 2017 — RY v Commission

(Case T-160/17)

(2017/C 144/74)

Language of the case: French

Parties

Applicant: RY (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European Commission

Form of order sought

Declare and rule:

- The decision of 27 April 2016 of the Director General of the Human Resources and Security Directorate General (DG HR) terminating the applicant's contract as a member of the temporary staff concluded for an indefinite period under Article 47(c)(i) of the CEOS is annulled;
- The European Commission is ordered to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging infringement of the right of the applicant to be heard before the adoption of the decision terminating the applicant's contract for an indefinite period. According to the applicant, the contested decision was adopted in breach of Article 41 of the Charter of Fundamental Rights. In addition, it was adopted in breach of the obligation to state reasons and, more exactly, of the right of the applicant to be informed of all the objective complaints which underlie the contested decision and, in particular, the reasons for an alleged breakdown in the relationship of trust.

**Action brought on 14 March 2017 — Apple and Pear Australia and Star Fruits Diffusion v EUIPO —
Pink Lady America (WILD PINK)**

(Case T-164/17)

(2017/C 144/75)

Language in which the application was lodged: English

Parties

Applicants: Apple and Pear Australia Ltd (Victoria, Australia), Star Fruits Diffusion (Caderousse, France) (represented by: T. de Haan and P. Péters, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Pink Lady America (Yakima, Washington, United States)