

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

- annul the defendant's award decision regarding Phase 2 of the restricted procurement procedure (reference EuropeAid/138143/DH/SER/AL), communicated to the applicants with its letter of 6 March 2017, by which they were informed that their bid had not been successful and that the contract was awarded to another tenderer;
- order the defendant to provide the applicants with compensation in the form of damages for the loss of opportunity to be awarded a contract, in the amount of EUR 240 000 (two hundred and forty thousand Euros);
- order the defendant to pay the applicants exemplary damages in the amount of EUR 40 000 (forty thousand Euros);
- order the Defendant to pay the applicants' legal fees and other costs and expenses incurred in connection with this application, even if the current application is rejected.

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 that the defendant infringed the EU law of public procurement, the principles of transparency and equal treatment and the provisions of the Financial Regulation, by not communicating to the applicants the award decision at the same time it communicated it to the other tenderers and by refusing to respect the standstill period. The applicants argue that the defendant acted in breach of the principle of sound administration by adversely affecting the applicants' right to an effective remedy against the contested decision.
2. Second plea in law, alleging that the defendant changed the tender specifications a few days before the deadline for the submission of tenders, introducing new terms. By doing so, the defendant infringed Article 112 of the Financial Regulation, since changes to procurement documents occurred through contacts during the procurement procedure and more specifically through clarifications that were given to the tenderers.
3. By their third plea, the applicants argue that the defendant committed several manifest errors of assessment, which are depicted in the extracts of the Evaluation Report communicated to the applicants and that the defendant introduced new and unknown criteria at the stage of the evaluation of the offers.

Action brought on 6 June 2017 — Aide et Action France v Commission

(Case T-357/17)

(2017/C 269/40)

Language of the case: French

Parties

Applicant: Aide et Action France (Paris, France) (represented by: A. Le Mière, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the decision of the European Commission of 6 April 2017, as well as debit note No 3241607987 received on 8 August 2016, with all the legal consequences which that entails;
- order the European Commission to pay Aide et Action France EUR 8 000 on the basis of Article 134 of the Rules of Procedure of the General Court of the European Union.

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 that the applicant has an interest in bringing proceedings and standing, since the decision of 6 April 2017 ('the contested decision') has legal effects as regards the applicant.
2. Second plea in law, alleging that the contested decision contains an inadequate statement of reasons, in that:
 - that decision infringes Article 296 of the Treaty on the Functioning of the European Union (TFEU) and Article 41 of the Charter of Fundamental Rights of the European Union ('the Charter');
 - that decision does not contain any clear and unambiguous factual or legal elements;
 - the Commission merely invokes contractual breaches, without referring to any contractual provision on the basis of which such breaches could be established, or on the basis of which the amount of the debt alleged could be determined;
 - that decision is insufficiently reasoned even in the light of its context;
 - the investigations and the summary of the facts of the European Anti-fraud Office (OLAF) did not enable the applicant to understand the scope of the measure taken against it.
3. Third plea in law, concerning the refusal of access to OLAF's final report sent to the European Commission, in that:
 - the contested decision infringes Article 15(3) TFEU, Article 42 of the Charter and 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;
 - once the debit note had been issued and the decision to proceed with recovery by offsetting had been taken, the applicant should have had access to OLAF's final report in order to exercise its rights of defence fully;
 - the Commission should have agreed on the national conditions as regards the right of access to documents on which an unfavourable decision is based;
 - the Grant Contract provided that investigation reports and evaluations of the Commission should be notified;
 - the Commission could in any event have disclosed a document by redacting certain passages.

4. Fourth plea in law, alleging that the contested decision is unfounded and, therefore, infringes the TFEU, in that:

- the contested decision infringes Article 209 TFEU and its implementing Financial Regulations No 966/2012 of 25 October 2012 and No 1268/2012 of 29 October 2012;
- the contested decision is not based on any claim which is certain, of a fixed amount and due;
- all of the funds received by the applicant were entirely used for the implementation of the programme for which the European funds had been granted, in accordance with Article 14 of Annex 2 to the Grant Contract.

Action brought on 14 June 2017 — Poland v Commission

(Case T-376/17)

(2017/C 269/41)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as Agent)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul European Commission Implementing Decision C(2017) 2104 final of 4 April 2017 extending the suspension of monthly payments to Poland concerning preliminary recognition aid for groups of producers in the fruit and vegetable sector within the framework of the European Agriculture Guarantee Fund (EAGF);
- order the European Commission to pay the costs.

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 that the Commission infringed the second sentence of the second subparagraph of Article 41(2) of Regulation No 1306/2013, ⁽¹⁾ read in conjunction with the introductory wording of the first subparagraph of that provision and Article 41(2)(b) of that regulation, by extending the suspension of monthly payments on the basis of errors of fact and misinterpretation of the law, notwithstanding the fact that the conditions for suspending monthly payments were not met.
2. Second plea in law, alleging that the Commission infringed the principle of proportionality and Article 41(3) of Regulation No 1306/2013 by maintaining the rate of suspension of monthly payments at a level that was flagrantly excessive in relation to the risk of potential loss to the European Union budget.

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy (OJ 2013 L 347, p. 549).
