

Defendant: Magistrat der Stadt Salzburg

Other party to the proceedings: Finanzamt Salzburg-Stadt

Question referred

Is Annex X of the list referred to in Article 24 of the Act of Accession of the Republic of Hungary to the European Union (1. Freedom of movement for persons) ⁽¹⁾ to be interpreted as meaning that the leasing of workers from Hungary to Austria cannot be regarded as a posting of those workers and that national restrictions concerning the employment of Hungarian workers in Austria apply equally, in Austria, in respect of Hungarian workers (regularly employed in Hungary) leased by Hungarian undertakings to Austria?

⁽¹⁾ OJ 2003 L 236, p. 846.

Appeal brought on 18 May 2010 by Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE against the judgment of the General Court (Third Chamber) delivered on 2 March 2010 in Case T-70/05: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Maritime Safety Agency (EMSA)

(Case C-252/10 P)

(2010/C 221/31)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: N. Korogiannakis, M. Dermitzakis, Δικηγόροι)

Other party to the proceedings: European Maritime Safety Agency (EMSA)

Form of order sought

The appellant claims that the Court should:

- Set aside the decision of the General Court.
- Annul the decision of EMSA to reject the bid of the Appellant, submitted by the Appellant in tendering procedure EMSA C-1/01/04, relating to the contract entitled 'SafeSeaNet Validation and further development', and to award the contract to other tenderer.

- Order EMSA to pay the Appellant's legal and other costs including those incurred in connection with the initial procedure, even if the current Appeal is rejected as well as those of the current Appeal, in case it is accepted.

Pleas in law and main arguments

The Appellant maintains that the contested judgment should be set aside on the following grounds:

First, the Appellant submits that the General Court committed an error in law adopting an erroneous interpretation of the Financial Regulation ⁽¹⁾, the Implementing Rules and Directive 92/50 ⁽²⁾ and especially Article 97 of the Financial Regulation, Article 138 of the Implementing Rules and article 17 par. 1 of Directive 92/50.

Second, the Appellant submits that the General Court erred in law by stating, in par 178 of its judgment, that since ED had an in-depth knowledge of the tender specifications it was in a position to deduce the relative advantages of the successful tenderer. The General Court appears herein to implicitly admit that the information provided by the contracting authority was limited. However, instead of annulling the contested decision, the General Court gives a fresh and wholly wrong interpretation of the duty to state reasons since it connects that to the personal qualities of the addressee of that decision. Moreover, the assumption of the General Court is wrong since the Appellant was unable (and remains so even today) to understand the relative advantages (if any) of the successful tenderer, especially since the General Court does not sufficiently motivate its judgment in order to clearly identify them.

Thirdly, the Appellant considers that the General Court appears to err in law by stating with regards to the plea as to the manifest error of assessment that the Appellant limited its arguments to general assertions and consequently failed to show whether, and in what way, the alleged errors affected the final outcome of the tenders' evaluation. The court seems to contradict itself by rejecting the plea as to the insufficient statement of reasons, while at the same time, requiring ED to demonstrate 'in detail' the way the alleged errors are reflected in the evaluation committee's report.

⁽¹⁾ Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities
OJ L 248, p. 1

⁽²⁾ Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts
OJ L 209, p. 1