



Reports of Cases

Case T-415/10

Nexans France

v

European Joint Undertaking for ITER and the Development of Fusion Energy

(Public supply contracts — Euratom — Procedure for call for tenders by the Joint Undertaking Fusion for Energy — Supply of electrical equipment — Rejection of a tenderer's offer — Open procedure — Offer containing reservations — Legal certainty — Legitimate expectations — Proportionality — Conflict of interests — Award decision — Action for annulment — No direct effect — Inadmissibility — Non-contractual liability)

Summary — Judgment of the General Court (First Chamber), 20 March 2013

1. *Judicial proceedings — Application initiating proceedings — Formal requirements — Identification of the subject-matter of the dispute — Brief summary of the pleas in law on which the application is based — Application not sufficiently clear and precise — Inadmissibility*

(Statute of the Court of Justice, Arts 21, first para., and 53, first para.; Rules of Procedure of the General Court, Art. 44(1)(c))

2. *Actions for annulment — Interest in bringing proceedings — Natural or legal persons — Action capable of securing a benefit for the applicant — Action brought by a tenderer, rejected before the award phase, against a decision to award a contract — Inadmissibility*

(Art. 263, fourth para., TFEU)

3. *EU public contracts — Tender procedure — Duty to comply with the principle of equal treatment of tenderers — Need to ensure equal opportunities and comply with the principle of transparency — Compliance with the principle of legal certainty — Scope*

4. *EU public contracts — Conclusion of a contract following a call for tenders — Discretion of the institutions — Judicial review — Limits*

5. *EU public contracts — Conclusion of a contract following a call for tenders — Power of the institutions in the conduct of the tendering procedure — Exclusion of tenderers in a conflict of interest situation — Scope — Limits*

6. *EU law — Principles — Protection of legitimate expectations — Conditions — Specific assurances given by the authorities*

7. *Non-contractual liability — Conditions — Unlawfulness — Damage — Causal link — One of the conditions not satisfied — Claim for compensation dismissed in its entirety*

(Art. 340, second para., TFEU; Council Decision 2007/198, Art. 9(2))

1. See the text of the decision.

(see paras 49, 50)

2. See the text of the decision.

(see paras 53-56)

3. See the text of the decision.

(see paras 71, 80, 102)

4. See the text of the decision.

(see paras 100, 101)

5. In the matter of public contracts, the fact that a tenderer, even though he has no intention of doing so, is capable of influencing the conditions of a call for tenders in a manner favourable to himself constitutes a situation of a conflict of interests. In that regard, the conflict of interests constitutes a breach of the equal treatment of candidates and of the equal opportunities for tenderers. The concept of a conflict of interests is objective in nature and, in order to characterise it, it is appropriate to disregard the intentions of those concerned, in particular whether they acted in good faith.

The awarding authorities are under no obligation to exclude systematically tenderers in a situation of a conflict of interests, such exclusion not being justified in cases in which it is possible to show that that situation had no impact on their conduct in the context of the tender procedure and that it entails no risk of practices likely to distort competition between tenderers. On the other hand, the exclusion of a tenderer in a situation of a conflict of interests is essential where there is no more appropriate remedy to avoid any breach of the principles of equal treatment of tenderers and transparency.

(see paras 114-117)

6. See the text of the decision.

(see para. 169)

7. In the matter of non-contractual liability, under Article 9(2) of Decision 2007/198 establishing a Joint Undertaking for ITER and the Development of Fusion Energy and conferring advantages upon it, that Joint Undertaking is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its servants in the performance of their duties. In that regard, in order for the Joint Undertaking to incur non-contractual liability, a number of requirements must be satisfied, namely the unlawfulness of the alleged conduct of the institutions, the reality of the damage and the existence of a causal link between that conduct and the alleged damage.

If any one of those conditions is not satisfied, the action for damages must be dismissed in its entirety and it is unnecessary to consider the other conditions.

(see paras 179, 180)