

Re:

Application pursuant to Article 278 TFEU for, first, suspension of the operation of the decisions of the European Space Agency (ESA) of 19 and 22 January 2021, acting in the name and on behalf of the Commission, to reject the applicant's tender for public contract 2018/S 091-206089 and to award that public contract to two other tenderers, and, second, for the Commission to be ordered to provide access to the tender documentation.

Operative part of the order

1. The application for interim relief is dismissed.
2. The orders of 31 January 2021, OHB System v Commission (T-54/21 R), and of 26 February 2021, OHB System v Commission (T-54/21 R), are set aside.
3. The costs are reserved, with the exception of those incurred by Airbus Defence and Space GmbH. It shall bear the costs in relation to its application to intervene.

Order of the President of the General Court of 26 May 2021 — Darment v Commission**(Case T-92/21 R)**

(Application for interim relief — Environment — Fluorinated greenhouse gases — Regulation (EU) No 517/2014 — Placing of hydrofluorocarbons on the market — Decision imposing a penalty on an undertaking that exceeded the quota allocated to it — Application for interim measures — No urgency)

(2021/C 278/68)*Language of the case: English***Parties**

Applicant: Darment Oy (Helsinki, Finland) (represented by: C. Ginter, lawyer)

Defendant: European Commission (represented by: B. De Meester and K. Talabér-Ritz, acting as Agents)

Re:

Application under Article 279 TFEU seeking, first, an order requiring the Commission to cease applying to the applicant, as regards the year 2021 and subsequent allocation periods, a penalty under Article 25(2) of Regulation (EU) No 517/2014 of the European Parliament and of the Council of 16 April 2014 on fluorinated greenhouse gases and repealing Regulation (EC) No 842/2006 (OJ 2014 L 150, p. 195), and, secondly, an order requiring the Commission to allocate to the applicant a quota for the bulk import of hydrofluorocarbons for the 2021 allocation period and subsequent allocation periods.

Operative part of the order

1. The application for interim measures is dismissed.
2. The costs are reserved.

Action brought on 27 April 2021 — SE v Commission**(Case T-223/21)****(2021/C 278/69)***Language of the case: English***Parties**

Applicant: SE (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul the decision rejecting his application to post COM/2020/1474, which he became aware of at the latest on 15 September 2020;
- annul the decision of 28 October 2020 rejecting his request under Article 90(1) of the Staff Regulations pertaining to his eligibility for promotion and to be assigned or re-graded to a new post;
- as far as necessary, annul the decisions of 18 January 2021 and 3 March 2021 respectively rejecting the applicant's complaints of 16 September 2020 and 2 November 2020;
- order the compensation of his material prejudice resulting from the loss of a chance to be appointed/assigned to post COM/2020/1474 as from 1 September 2020, as estimated in this application;
- order the compensation of his material prejudice resulting from the loss of a chance to be promoted from 16 May 2020, as estimated in this application;
- order the compensation of his material prejudice resulting from the loss of a chance to become a permanent official based on participation in internal competitions restricted to temporary agents 2(b) AD level, as estimated in this application;
- order the defendant to pay the entire costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two sets of pleas in law, amounting to eight pleas in total.

The first set of pleas in law refers to the applicant's action in so far as it is directed against the rejection of his application to post COM/2020/1474, whereas the second set of pleas concerns his action in so far as it is directed against the decision denying him the possibility of being promoted, re-graded, re-classified and/or appointed to another post.

1. First plea in law (first set of pleas), alleging a failure to notify the decision and failure to provide reasons.

- It is argued that the applicant never received a formal notification regarding the outcome of his application to the vacancy COM/2020/1474, contrary to the obligation provided by Article 25(2) of the Staff Regulations and to the duty of good administration enshrined in Article 41 of the Charter of Fundamental Rights of the EU. He learned on 15 September 2020 that another person started her service on that post as a temporary agent 2(b). That decision was also never properly motivated.

2. Second plea in law (first set of pleas), alleging that the rejection of the application for post COM/2020/1474 is illegal as it is based on an irregular interpretation of Article 8(2) and Article 10(3) of the Conditions of Employment of Other Servants of the EU (CEOS) — Violation of Article 8(2) and Article 10(3) CEOS, of the applicant's contract and of the interest of the service.

- From the various exchange of emails, it appears that the administration is under the mistaken belief that it is not possible for a temporary agent at the Commission to obtain a second contract as a temporary agent in the Commission during his/her career and that under Article 8(2) CEOS a temporary agent (TA2(b)) can have only one contract. However, the applicant argues that there is nothing in the CEOS that supports this view.

3. Third plea in law (first set of pleas), alleging a failure to follow established administrative practices, unequal treatment and age discrimination.
 - The applicant argues that there are several instances in which temporary agents 2b have been re-assigned to different posts carrying different tasks and responsibilities without the need of a new contract, such as under the Junior Professionals Program (JPP).
4. Fourth plea in law (first set of pleas), alleging lack of transparency, denial of the right to be heard, and denial of an effective remedy.
 - The administration, it is argued, has not been transparent with the handling of this procedure. It has engaged in dubious procedural practices, which resulted in the denial of the applicant's right to be heard and the opportunity to have an effective remedy.
5. First plea in law (second set of pleas), alleging irregular interpretation of Article 8(2) and Article 10(3) CEOS — Violation of Article 8(2) and Article 10(3) CEOS, of the applicant's contract and of the interest of the service.
 - It is argued that the administration's position denying the applicant's promotion, re-grading, reclassification and appointment to another post is manifestly erroneous and lacks a legal basis for the reasons explained in relation to the first contested decision.
6. Second plea in law (second set of pleas), alleging unequal treatment and age discrimination between temporary agents 2(b) in the Commission.
 - With regard to the applicant's eligibility to apply and be assigned to other posts for members of the temporary staff, and specifically for vacancies of temporary staff under Article 2(b) CEOS, the applicant alleges that the administration has discriminatory practices between JPP candidates who are also temporary agents 2(b) and the applicant, also a temporary agent 2(b).
7. Third plea in law (second set of pleas), alleging the unequal treatment between temporary agents 2(b) of different Union entities.
 - The possibility of promotion for temporary agents 2(b) has been expressly recognised by other EU institutions and bodies. By failing to organise promotion exercises and by not providing for the same right to promotion to temporary agents 2(b), the European Commission treats such temporary agents in a less favourable manner than other institutions and bodies.
8. Fourth plea in law (second set of pleas), alleging unequal treatment between temporary agents 2(b) and other temporary agents in the Commission.
 - With regard to promotion or re-classification, the administration's failure to organise promotion exercises or allow individual promotions leads to an unequal treatment between the applicant, as a temporary agent 2(b), as compared with other categories of temporary agents, and in particular temporary agents 2(a) and 2(c).

Action brought on 30 April 2021 — Praesidiad/EUIPO — Zaun (Post)

(Case T-231/21)

(2021/C 278/70)

Language of the case: English

Parties

Applicant: Praesidiad Holding (Zwevegem, Belgium) (represented by: M. Rieger-Janson and D. Op de Beeck, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Zaun Ltd (Wolverhampton, United Kingdom)