



Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

8 November 2012*

(Appeal — Action for damages — Rejection of a bid submitted in a European Union tendering procedure — Limitation period — Point from which time starts to run — Application of the extension of time on account of distance)

In Case C-469/11 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 5 September 2011,

Evropaïki Dynamiki – Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE, established in Athens (Greece), represented by N. Korogiannakis, dikigoros,

appellant,

the other party to the proceedings being:

European Commission, represented by E. Manhaeve and M. Wilderspin, acting as Agents,

defendant at first instance,

THE COURT (Third Chamber),

composed of R. Silva de Lapuerta, acting as President of the Third Chamber, K. Lenaerts, G. Arestis, J. Malenovský and T. von Danwitz (Rapporteur), Judges,

Advocate General: Y. Bot,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 12 July 2012,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 By its appeal, Evropaïki Dynamiki – Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE ('Evropaïki Dynamiki') seeks the annulment of the order of 22 June 2011 in Case T-409/09 *Evropaïki Dynamiki v Commission* [2011] ECR II-3765 ('the order under appeal'), by which the General Court of the European Union dismissed its claim for compensation for the loss purportedly suffered as a result of the rejection of a tender submitted in a tendering procedure.

Legal context

The Statute of the Court of Justice of the European Union

- 2 The first paragraph of Article 46 of the Statute of the Court of Justice of the European Union, applicable to proceedings before the General Court by virtue of the first paragraph of Article 53 thereof, provides, in the version applicable at the time when the application was made:

'Proceedings against the Union in matters arising from non-contractual liability shall be barred after a period of five years from the occurrence of the event giving rise thereto. The period of limitation shall be interrupted if proceedings are instituted before the Court of Justice or if prior to such proceedings an application is made by the aggrieved party to the relevant institution of the Union. In the latter event the proceedings must be instituted within the period of two months provided for in Article 263 [TFEU]; the provisions of the second paragraph of Article 265 [TFEU] shall apply where appropriate.'

The Rules of Procedure of the General Court

- 3 Article 102(2) of the Rules of Procedure of the General Court provides:

'The prescribed time-limits shall be extended on account of distance by a single period of 10 days.'

Background to the dispute

- 4 Evropaïki Dynamiki submitted, in May 2004, a tender in response to a European Commission call for tenders.
- 5 On 15 September 2004, Evropaïki Dynamiki received a letter from the Commission, bearing that day's date, by which the Commission informed it that its tender had not been selected, stating that the grounds for that rejection related to the composition and stability of the team, the procedures proposed for transferring knowledge on completion of the project, and the fact that its bid did not offer the best value for money. The Commission also indicated that Evropaïki Dynamiki could request in writing additional information on the grounds for the rejection of its tender.
- 6 By letter of 22 October 2004, at the request of Evropaïki Dynamiki, the Commission provided additional information regarding the evaluation of its tender.
- 7 Evropaïki Dynamiki brought an action before the General Court seeking the annulment of the Commission's decision of 15 September 2004, contained in the Commission's letter of the same date, to reject its tender and to award the contract to the successful tenderer in the tendering procedure. By judgment of 10 September 2008 in Case T-465/04 *Evropaïki Dynamiki v Commission*, the General Court annulled that decision on the ground of defective reasoning. It took the view that the decision and, in particular, the subsequent correspondence did not indicate clearly the grounds on which Evropaïki Dynamiki's tender had been rejected.

The proceedings before the General Court

- 8 On 25 September 2009, Evropaiki Dynamiki brought an action before the General Court by fax, seeking compensation for the loss which it had allegedly suffered as a result of the unlawful rejection of its tender, consisting of the gross profit which it could have made from the contract if it had been awarded to it. In addition, it sought compensation for loss of opportunity in so far as it had allegedly suffered damage by reason of the loss both of the opportunity to carry out the contract in question and of the chance to be awarded other contracts, in particular the contract awarded to the contractor which had successfully bid for the original contract.
- 9 The packages containing the signed original of the application, copies of that document and the annexes were sent on 3 October 2009 via a courier service.
- 10 On 5 October 2009, the Registry of the General Court informed Evropaiki Dynamiki's counsel that the package containing the original had not yet arrived. A copy of the missing documents and a new signed original of the application were lodged at the Registry on that same day.
- 11 On 16 November 2009, the Registry of the General Court informed Evropaiki Dynamiki that the new original of the application, which had been lodged on 5 October 2009, differed from the copy of that document which had been received by fax on 25 September 2009. In accordance with Article 43(6) of the Rules of Procedure of the General Court, the date of 5 October 2009 was taken as the date on which the action had been brought.
- 12 Evropaiki Dynamiki subsequently set out in two letters the reasons why the original of the application had not arrived within the time-limits and the circumstances of the loss of the package by the company to which it had entrusted the courier service. In addition, it requested that the General Court acknowledge that there was a situation of *force majeure* in the present case and that it treat 25 September 2009, rather than 5 October 2009, as being the date on which the original of the application had been lodged.
- 13 In December 2009, Evropaiki Dynamiki was informed by the courier company which it had used that the missing package had not been found.
- 14 The Commission raised an objection of inadmissibility before the General Court pursuant to Article 114(1) of the Rules of Procedure of the General Court on the ground that the action for damages was time-barred.

The order under appeal

- 15 First of all, the General Court, by the order under appeal, held that the limitation period had begun to run when the Commission's decision rejecting Evropaiki Dynamiki's tender had been notified to the latter, namely 15 September 2004. In that regard, the General Court stated that it was the rejection of the tender, and not the reasons for that rejection, which constituted the event giving rise to the proceedings to establish liability in the field of public procurement and caused the materialisation of the loss allegedly suffered by the unsuccessful tenderer. Although, it was true, as Evropaiki Dynamiki submitted, that paragraphs 44, 45 and 48 of the order in Case T-140/04 *Ehcon v Commission* [2005] ECR II-3287 could be read to the opposite effect, they could not call that solution into question, as they had to be read in context and in their logical order.
- 16 To prevent the limitation period for bringing proceedings against the European Union to establish non-contractual liability from starting to run as long as the party which has alleged harm is not personally convinced that it has suffered damage would, the General Court ruled, have the result that

the point at which those proceedings become time-barred would vary according to the individual perception that each party might have as to the reality of the damage, something which would be at variance with the requirement of legal certainty.

- 17 In that regard, the General Court also pointed out that it was apparent from a letter sent to the Registry of the General Court by Evropaiki Dynamiki that the latter took the view that the unlawful conduct on the part of the Commission had occurred when it sent the letter of 15 September 2004 notifying the rejection of the tender, given that Evropaiki Dynamiki had implicitly conceded that the limitation period had started to run from that date.
- 18 Consequently, the five-year limitation period was held to have expired on 15 September 2009.
- 19 Next, the General Court held that that limitation period had not been extended on account of distance pursuant to Article 102(2) of the Rules of Procedure of the General Court. That extension, the General Court ruled, related only to procedural time-limits and not to the limitation period laid down in Article 46 of the Statute of the Court of Justice, the expiry of which results in the action to establish non-contractual liability being time-barred (see, to that effect, Case T-210/00 *Biret et Cie v Council* [2002] ECR II-47, paragraphs 19 and 45; Case T-28/03 *Holcim (Deutschland) v Commission* [2005] ECR II-1357, paragraph 74; order of 19 May 2008 in Case T-220/07 *Transports Schiocchet – Excursions v Commission*, paragraphs 15 and 35; and order of 16 December 2009 in Case T-194/08 *Cattin v Commission*, paragraphs 61 and 65).
- 20 According to the General Court, those two types of time restriction were inherently different, as could be inferred from the case-law. Procedural time-limits, such as time-limits for bringing an action, are matters of public policy and are not subject to the discretion of the parties or the court. By contrast, a court may not of its own motion raise the argument that an action seeking to establish non-contractual liability is time-barred. Moreover, Article 46 of the Statute of the Court of Justice does not make a distinction, in calculating the limitation period, according to whether the cause of the interruption of that period is the bringing of proceedings or the submission of an application prior to such proceedings.
- 21 However, according to the General Court, the application of the procedural time-limit provided for in Article 102(2) of the Rules of Procedure would have the consequence that limitation would occur at the end of a different period according to whether the aggrieved party had chosen to bring the matter directly before the European Union Courts or, beforehand, before the relevant institution. Such a difference, which is not provided for in Article 46 of the Statute of the Court of Justice, would make the expiry of the limitation period dependent on a factor which is not objective and would also have the consequence of encouraging the settling of disputes by means of court proceedings rather than by seeking amicable solutions.
- 22 That conclusion, the General Court continued, was not called into question by the fact that, in a judgment which remains an isolated case (Case T-571/93 *Lefebvre and Others v Commission* [1995] ECR II-2379, paragraph 26), it held that, in the context of the limitation period for proceedings against the European Union in matters arising from non-contractual liability, it was necessary to take into account the extension on account of distance.
- 23 Finally, the General Court held that the action before it to establish non-contractual liability was time-barred, as regards the alleged losses, as it had been brought more than five years after the occurrence of the events which had given rise to it, within the meaning of Article 46 of the Statute of the Court of Justice, and it was not necessary to examine the other pleas and arguments put forward by the parties, including the plea alleging the existence of unforeseeable circumstances or of *force majeure*.

24 The General Court held that Evropaīki Dynamiki's claim for compensation in respect of the damage suffered as a result of the loss of the opportunity of securing future contracts was manifestly unfounded in law and that it was not necessary to rule on its admissibility.

Forms of order sought by the parties

25 Evropaīki Dynamiki claims that the Court should:

- set aside the order under appeal;
- reject the objection of inadmissibility raised by the Commission in its entirety;
- remit the case to the General Court for judgment on the substance, and
- order the Commission to pay all the costs incurred at both instances, even if the appeal is dismissed.

26 The Commission contends that the Court should:

- dismiss the appeal, and
- order the appellant to pay the costs of both instances.

The appeal

27 In support of its appeal, Evropaīki Dynamiki raises four grounds of appeal alleging errors in law on the part of the General Court. The first and fourth grounds allege, respectively, an incorrect interpretation of Article 46 of the Statute of the Court of Justice and of Article 102(2) of the Rules of Procedure of the General Court, read in conjunction with Article 46 of the Statute. The second and third grounds allege infringement of the principles of equal treatment and of legal certainty.

The fourth ground of appeal

Arguments of the parties

28 By its fourth ground of appeal, which it is appropriate to examine first, Evropaīki Dynamiki argues that the General Court erred in law in holding that the limitation period had begun to run from the time at which the decision rejecting its tender was notified to it, namely 15 September 2004. Contrary to the findings of the General Court in the order under appeal, that Court had held, in its order in *Ehcon v Commission*, that the limitation period began to run when the tenderer was in fact aware of the reasons why its tender had been rejected. In the opinion of Evropaīki Dynamiki, a tenderer is in a position to assess the lawfulness of a contract award procedure only once it has been informed of the grounds of the Commission's decision rejecting its tender.

29 In the present case, it claims, it was not informed of the grounds of the Commission's decision until the period between 20 and 23 October 2004, with the result that the limitation period began to run on 23 October 2004.

30 The Commission submits that the General Court did not err in law in holding that the limitation period had begun to run on 15 September 2004. As is apparent from the order under appeal, Evropaīki Dynamiki has impliedly accepted that that was the starting date of that period.

31 In the alternative, the Commission submits that the analysis of the General Court as regards the point from which that period begins to run is, in any event, correct.

Findings of the Court

32 Under Article 46 of the Statute of the Court of Justice, proceedings against the European Union in matters arising from non-contractual liability are barred after a period of five years from the occurrence of the event giving rise thereto.

33 The length of the limitation period thus provided for was determined by taking into account, in particular, the time that the party which has allegedly suffered harm needs to gather the appropriate information for the purpose of a possible action and to verify the facts likely to provide the basis of that action (order in Case C-136/01 P *Autosalone Ispra dei Fratelli Rossi v Commission* [2002] ECR I-6565, paragraph 28).

34 In accordance with settled case-law, that period begins to run once the requirements governing the obligation to provide compensation for damage are satisfied and, in particular, once the damage to be made good has materialised (Joined Cases 256/80, 257/80, 265/80, 267/80 and 5/81 *Birra Wührer and Others v Council and Commission* [1982] ECR 85, paragraph 10; Case C-282/05 P *Holcim (Deutschland) v Commission* [2007] ECR I-2941, paragraph 29; and Case C-51/05 P *Commission v Cantina sociale di Dolianova and Others* [2008] ECR I-5341, paragraph 54).

35 It is, admittedly, appropriate to interpret Article 46 of the Statute of the Court of Justice as meaning that limitation cannot constitute a valid defence to a claim by a person who has suffered damage in the case where that person only belatedly became aware of the event giving rise to it and thus could not have had a reasonable time in which to submit his application before the expiry of the limitation period (Case 145/83 *Adams v Commission* [1985] ECR 3539, paragraph 50).

36 However, the conditions to which the obligation to pay compensation for damage referred to in the second paragraph of Article 340 TFEU is subject and, therefore, the rules on limitation periods which govern actions relating to that compensation for such damage may be based only on strictly objective criteria (see *Commission v Cantina sociale di Dolianova and Others*, paragraph 59).

37 Thus, exact and detailed knowledge of the facts of the cause is not one of the conditions which must be met in order for the limitation period to begin running (order in *Autosalone Ispra dei Fratelli Rossi v Commission*, paragraph 31, and judgment in *Commission v Cantina sociale di Dolianova and Others*, paragraph 61). Similarly, the subjective appraisal of the reality of the damage by the victim cannot be taken into consideration for the purpose of determining the moment at which the limitation period begins to run in proceedings brought against the European Union for non-contractual liability (*Commission v Cantina sociale di Dolianova and Others*, paragraph 61).

38 In the case of disputes arising from individual measures, the limitation period begins to run as soon as the decision has produced its effects vis-à-vis the persons concerned by it (Case C-282/05 P *Holcim (Deutschland) v Commission*, paragraph 30, and judgment of 11 June 2009 in Case C-335/08 P *Transports Schiocchet – Excursions v Commission*, paragraph 33).

39 In the present case, the claim for compensation made by EvropaĀki Dynamiki is based on the rejection of the tender which it submitted in a Commission tendering procedure.

40 In such a situation, as the General Court correctly ruled in the order under appeal, without EvropaĀki Dynamiki having challenged that finding, the decision of the contracting authority to reject the tender submitted constitutes the loss-causing event capable of giving rise to non-contractual liability on the part of that authority. The adverse effects of such a decision affect the tenderer concerned once its

tender has been rejected. Thus, knowledge of such a decision by the tenderer must, in principle, be regarded as constituting the starting point of the limitation period, not knowledge of the grounds therefor.

- 41 In those circumstances, and having regard to the findings in paragraphs 36 and 37 of this judgment, the view must be taken that the limitation period began to run on the date on which Evropaiki Dynamiki received the letter from the Commission by which the latter informed it that its tender had not been selected, that is to say, 15 September 2004. In that regard, the fact that the appellant received, on a later date, additional information concerning the grounds for the rejection of its tender is irrelevant.
- 42 In that context, it is also not relevant that the decision of 15 September 2004 was annulled on 10 September 2008 by the judgment of the General Court in Case T-465/04 *Evropaiki Dynamiki v Commission* on the ground of deficient reasoning. It is in fact immaterial, as regards the starting point of the period of limitation, whether the European Union's unlawful conduct has been established by a judicial decision (judgment in Case C-282/05 P *Holcim (Deutschland) v Commission*, paragraph 31).
- 43 In any event, Evropaiki Dynamiki has not argued that it did not have a reasonable time in which to submit its application before the expiry of the limitation period by reason of the fact that the latter began to run from the time at which it became aware of the Commission's decision rejecting its tender, or even because of the insufficient reasoning of that decision.
- 44 In those circumstances, it must be concluded that the General Court acted correctly in law in holding that the limitation period began to run on 15 September 2004, and the fourth ground of appeal must accordingly be rejected as unfounded.

The first ground of appeal

Arguments of the parties

- 45 By its first ground of appeal, Evropaiki Dynamiki submits that the General Court erred in law in holding that Article 102(2) of the Rules of Procedure of the General Court, providing for an extension on account of distance, does not apply to the limitation period laid down in Article 46 of the Statute of the Court of Justice. It takes the view that an extension on account of distance applies to all periods for bringing proceedings or lodging procedural documents. The distinction drawn by the General Court between 'procedural time-limit' and 'limitation period' has, it argues, no basis in either the wording of those provisions or in the case-law.
- 46 The case-law which the General Court cited, in support of its finding that Article 102(2) of the Rules of Procedure of the General Court does not apply to the limitation period, concerns, in the view of the appellant, only procedural time-limits and not the limitation period laid down in Article 46 of the Statute of the Court of Justice. On the contrary, in paragraph 26 of the judgment in *Lefebvre and Others v Commission*, the General Court expressly accepted that Articles 101 to 103 of the Rules of Procedure of the General Court apply to cases of non-contractual liability and therefore to the limitation period.
- 47 In the submission of the Commission, the General Court did not err in law in holding that the extension on account of distance does not apply to the limitation period, since the latter is *sui generis*. Both the Court of Justice and the General Court have held that actions for damages are time-barred if they are brought five years after the date on which the damage occurred. *Lefebvre and Others v Commission* is out of line with the later case-law and cannot be relied on since it does not expressly address the question whether an extension on account of distance was applicable.

Findings of the Court

- 48 Under Article 102(2) of the Rules of Procedure of the General Court, extensions on account of distance apply to procedural time-limits and are intended to take account of the difficulties faced by parties owing to the fact that they may be a fairly long way away from the seat of the Court of Justice (see, to that effect, Case C-137/92 P *Commission v BASF* [1994] ECR I-2555, paragraph 40).
- 49 The limitation period provided for in the first paragraph of Article 46 of the Statute of the Court of Justice is not, however, a procedural time-limit. Those two time restrictions are, as the General Court rightly held, inherently different.
- 50 Procedural time-limits are laid down with a view to ensuring due administration of justice, clarity and legal certainty (see, to that effect, Case 227/83 *Moussis v Commission* [1984] ECR 3133, paragraph 12, and Case 191/84 *Barcella and Others v Commission* [1986] ECR 1541, paragraph 12). Thus, in particular, periods prescribed for bringing proceedings, such as that laid down in the sixth paragraph of Article 263 TFEU, and for bringing appeals, such as that laid down in the first paragraph of Article 56 of the Statute of the Court of Justice, are intended to ensure that administrative decisions and decisions of the courts become final and so to protect public interests. In consequence, periods prescribed for bringing proceedings are a matter of public policy and are therefore not within the discretion of the parties or the court, since compliance with them is to be examined by the European Union Court of its own motion (see, to that effect, Case C-246/95 *Coen* [1997] ECR I-403, paragraph 21 and the case-law cited).
- 51 By contrast, the Court has already held that compliance with the limitation period may not be raised by a European Union Court of its own motion but must be raised by the party affected (see, to that effect, Case 20/88 *Roquette frères v Commission* [1989] ECR 1553, paragraph 12).
- 52 In contrast to procedural time-limits, the limitation period in question, by resulting in the extinction of the legal action, is a matter of substantive law since it affects the enforceability of a subjective right which the person concerned can no longer effectively assert before the courts.
- 53 Furthermore, the limitation period laid down in the first paragraph of Article 46 of the Statute of the Court of Justice has the function, inter alia, firstly, of ensuring protection of the rights of the aggrieved person, who must have sufficient time in which to gather the appropriate information with a view to a possible action, and, secondly, of preventing the aggrieved person from being able to delay indefinitely the exercise of his right to damages. That period thus definitively protects the aggrieved person and the person responsible for the harm.
- 54 Limitation therefore constitutes an objection to admissibility which, unlike procedural time-limits, is not absolute, but extinguishes the action for liability solely at the request of the defendant.
- 55 To that end, the first paragraph of Article 46 of the Statute of the Court of Justice lays down, in its first sentence, the duration of the limitation period. In its second sentence, that provision sets out the events which give rise to interruption of that period, namely the institution of proceedings before the Court of Justice alleging non-contractual liability on the part of the European Union, or a prior application made to the relevant institution of the European Union. Although that second sentence does indeed state the procedural effects of the interrupting events which it lists, including, in particular, a procedural act, it does not seek to impose on the aggrieved person a period within which proceedings must be brought, and thus a procedural time-limit, since that person can also interrupt the limitation period laid down in the first sentence of the first paragraph of Article 46 of the Statute of the Court of Justice by a prior application made to the relevant institution of the European Union.

- 56 Furthermore, the calculation of the limitation period cannot, in accordance with the case-law cited in paragraph 36 of the present judgment, be based on criteria which are anything other than strictly objective nor, as the General Court has rightly pointed out, can that calculation differ according to whether the interruption of that period is caused by the bringing of an action or the making of a prior application. Application of the extension on account of distance to the limitation period would have the consequence that limitation would occur at the end of a different period depending on whether the aggrieved party has chosen to bring the matter directly before the General Court or to make a prior application to the competent European Union institution, something which would be at variance with the requirement of legal certainty necessary for the application of limitation periods (*Commission v Cantina sociale di Dolianova and Others*, paragraph 60).
- 57 With regard to the possible effect of paragraph 26 of the judgment of the General Court in *Lefebvre and Others v Commission*, relied upon by Evropaĭki Dynamiki in support of its first ground for appeal, it must be noted that although, in that judgment, the extension on account of distance was taken into account and the conclusion reached that the action in question was admissible, no reasoning was given for taking it into account which is capable of affecting the foregoing assessment.
- 58 Finally, it must be noted that the duration of the limitation period, laid down in the first paragraph of Article 46 of the Statute of the Court of Justice, does not appear comparable to that of the periods for the bringing of an action or an appeal, with the result that it cannot be claimed that the application of an extension to that limitation period on account of distance is necessary in order to ensure genuine enjoyment of the right to damages referred to in the second paragraph of Article 340 TFEU.
- 59 In those circumstances, the General Court did not err in law in holding that Article 102(2) of the Rules of Procedure of the General Court does not apply to the limitation period laid down in the first paragraph of Article 46 of the Statute of the Court of Justice. The first ground of appeal must therefore be rejected as unfounded.

The second and third grounds of appeal

Arguments of the parties

- 60 By its second and third grounds of appeal, Evropaĭki Dynamiki submits that, in taking the view that Article 102(2) of the Rules of Procedure of the General Court did not apply to Article 46 of the Statute of the Court of Justice, the General Court infringed the principles of equal treatment and legal certainty.
- 61 Evropaĭki Dynamiki argues that, so long as Article 102(2) of the Rules of Procedure of the General Court remains in force, the General Court is required to apply it in a uniform manner. Although the difficulties encountered by individuals or Member States in complying with time-limits are now much reduced from the period when the extension on account of distance was introduced, abolition of the extension on account of distance would none the less infringe the principle of equal treatment as between parties and their lawyers established in Luxembourg and those established in other Member States.
- 62 As regards the principle of legal certainty, since the relationship between Article 46 of the Statute of the Court of Justice and Article 102 of the Rules of Procedure of the General Court is not specified in the procedural texts in question, a change in the application of Article 102(2) of the Rules of Procedure of the General Court could be made only by way of an amendment to the Rules of Procedure and not by an interpretative order of the General Court.
- 63 In the opinion of the Commission, those grounds of appeal are unfounded having regard to the arguments put forward in respect of the first ground of appeal.

Findings of the Court

- 64 By its second and third grounds of appeal, Evropaïki Dynamiki seeks, in essence, to show that the General Court ought to have applied the extension on account of distance provided for in Article 102(2) of the Rules of Procedure of the General Court to the present case.
- 65 In that regard, it must be stated that the applicability, in the present case, of Article 102(2) of the Rules of Procedure of the General Court depends, in accordance with the finding set out in paragraph 48 of the present judgment, solely on whether or not the limitation period provided for in Article 46 of the Statute of the Court of Justice must be classified as a procedural time-limit.
- 66 In accordance with the finding set out in paragraph 49 of the present judgment, the limitation period is not a procedural time-limit.
- 67 In those circumstances, the second and third grounds of appeal, alleging infringement of the principle of equal treatment and of the principle of legal certainty respectively, must be rejected as unfounded.
- 68 It follows from all of the foregoing that, since none of the grounds of appeal put forward by the appellant has been upheld, the appeal must be dismissed in its entirety.

Costs

- 69 Under Article 138(1) of the Rules of Procedure of the Court of Justice, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs to be awarded against Evropaïki Dynamiki, and as the latter has been unsuccessful, Evropaïki Dynamiki must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

- 1. Dismisses the appeal;**
- 2. Orders Evropaïki Dynamiki – Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.**

[Signatures]