

Form of order sought

The applicant claims that the Court should:

- annul the decision of the European Commission rejecting the applicant's tender, or tenders, for the innovation programmes 'The Innovation Programme IP 4 — IT Solutions for Attractive Railway Services' and 'The Innovation Programme IP 5 — Technologies for Sustainable & Attractive European Freight' in the context of the 'Shift2Rail' project;
- award the applicant the costs of the proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law.

1. First plea in law, alleging that the assessment body exceeded the bounds of its jurisdiction

The applicant claims, *inter alia*, in this regard that the assessment body could not, in its procedure, supplant the exclusive right of the applicant to combine several separate tenders for the grant of the status of an associated member of the company 'Shift2Rail' in a single tender and it has thereby vitiated its assessment procedure. The applicant further submits that, if the submission of two separate tenders by one tenderer for different innovation programmes was not in accordance with the procurement documents, from the point of view of the assessment body, and if those documents do not provide for such a situation, then it should have been warned regarding that fact pursuant to Part 8.2 of the procurement documents, and therefore it should retain its right to dispose of the tenders submitted.

2. Second plea in law, alleging that the procedure followed by the assessment body was not in accordance with the procurement documents

The applicant claims in this connection that the assessment body did not act in accordance with the procurement documents, inasmuch as it disposed of the applicant's tenders without notifying the applicant or calling on it to clarify any ambiguities or errors.

The applicant is further of the opinion that the assessment body should have assessed (and awarded points to) its tenders separately, even after they were combined in a single tender, since it is only by following this procedure that the principle of objective evaluation and assessment may be complied with. The procedure followed by the assessment body, in assessing the applicant's tenders together and thus also awarding points with regard to the assessment criteria together, is misleading, discriminatory and in conflict with the basic principle of the procurement documents, and renders the decision impossible to review.

Action brought on 23 September 2015 — Portugal v Commission

(Case T-550/15)

(2015/C 389/69)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, P. Estêvão and J. Saraiva de Almeida, Agents)

Defendant: European Commission

Form of order sought

1. Annul Commission Implementing Decision (EU) 2015/1119, ⁽¹⁾ in so far it excludes from European Union financing the sum of EUR 8 206 006,65 relating to expenditure declared by the Portuguese Republic in connection with the Other Direct Aid — Ewe and Goats measure for the marketing years 2010, 2011 and 2012;
2. order the European Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law, alleging the following defects:

A — As regards the 2009 and 2010 marketing years — Controls during the retention period

1. misinterpretation and misapplication of Article 34(2) of Regulation No 796/2004 ⁽²⁾ as regards the concept of controls to be carried out 'throughout the retention period';
2. infringement of the principle of non-retroactivity, on account of the Commission's improper retroactive application of Article 2(10) of Regulation (EU) No 1368/2011, ⁽³⁾ in so far as it is only with the amendment of Article 41 of Regulation (EU) No 1122/2009 ⁽⁴⁾ that EU legislation provided that on-the-spot checks are to be 'spread throughout the entire retention period';
3. infringement of the principles of the protection of legitimate expectations and legal certainty, in so far as those principles require that any measures adopted by the institutions which produce legal effects must be clear and precise and that the persons concerned be made aware of such measures so that they are able to discern with certainty when those measure begin to have legal effects;
4. infringement of the principle of equality, given that the guidelines for the application of Article 34(2), in so far as such guidelines exist, must be in writing, failing which the principle of equality will be undermined, since there is no guarantee that measures will always be adopted in a uniform manner by all Member States in accordance with the principle of equality;
5. infringement of the principle of proportionality and of Article 5 TEU, in so far as the on-the-spot checks carried out the Portuguese authorities attain exactly the objective set out in the provisions in question, irrespective of whether the checks are carried out at the beginning, as claimed by the Commission, in the middle, or closer to the end, provided they are carried out unannounced and unexpectedly during the retention period;

B — As regards the 2011 marketing year — New regulatory electronic identification requirements

1. infringement of Article 11 of Regulation (EC) No 885/2006, ⁽⁵⁾ in so far as adequate reasons are not given for the decision, the grounds for which are imprecise and, as such, the decision fails to have regard to the rationale and objective of Article 11(1) of Regulation No 885/2006;

2. infringement of Article 31(2) of Regulation No 1290/2005 ⁽⁶⁾ and the principle of proportionality, given that, in the present case, the four requirements set out in the guidelines provided by the Commission on this subject are not fulfilled and in so far as those four requirements are cumulative.

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- ⁽¹⁾ Commission Implementing Decision (EU) 2015/1119 of 22 June 2015 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2015 L 182, p. 39).
- ⁽²⁾ Commission Regulation (EC) No 795/2004 of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (OJ 2004 L 141, p. 18).
- ⁽³⁾ Commission Implementing Regulation (EU) No 1368/2011 of 21 December 2011 amending Regulation (EC) No 1121/2009 laying down detailed rules for the application of Council Regulation (EC) No 73/2009 as regards the support schemes for farmers provided for in Titles IV and V thereof, and Regulation (EC) No 1122/2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for in that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2011 L 341, p. 33).
- ⁽⁴⁾ Commission Regulation (EC) No 1122/2009 of 30 November 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 73/2009 as regards cross-compliance, modulation and the integrated administration and control system, under the direct support schemes for farmers provided for that Regulation, as well as for the implementation of Council Regulation (EC) No 1234/2007 as regards cross-compliance under the support scheme provided for the wine sector (OJ 2009 L 316, p. 65).
- ⁽⁵⁾ Commission Regulation (EC) No 885/2006 of 21 June 2006 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the accreditation of paying agencies and other bodies and the clearance of the accounts of the EAGF and of the EAFRD (OJ 2006 L 171, p. 90).
- ⁽⁶⁾ Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (OJ 2005 L 209, p. 1).

Action brought on 25 September 2015 — Portugal v Commission

(Case T-551/15)

(2015/C 389/70)

Language of the case: Portuguese

Parties

Applicant: Portuguese Republic (represented by: L. Inez Fernandes, M. Figueiredo, P. Estêvão and J. Saraiva de Almeida, Agents)

Defendant: European Commission

Form of order sought

- (1) Annul Commission Implementing Decision (EU) 2015/1119, ⁽¹⁾ in so far as it excludes from European Union financing the sum of EUR 501 445,57 relating to expenditure declared by the Portuguese Republic in connection with the flax and hemp measure for the marketing year 1999/2000;
- (2) order the Commission to pay the costs.