

Form of order sought

- Annul the Decision of the Commission of 27 May 2011, not to take any remedial action after the European Ombudsman came to the conclusion that the Decision taken by the Commission in November 2006, to select the products and services of a third company, was not in conformity with the applicable EU public procurement legislation;
- Order the Commission to pay the applicant's damages in order to neutralise the impact it suffered on account of its decision of November 2006;
- Order the Commission to pay the applicant 1 million EURO for a loss of opportunity to participate in the call for tenders which it decided to cancel;
- Order the Commission to pay the applicant 1 million EURO for an authorised use of intellectual property rights;
- Order the Commission to pay the applicant the amount of 10 million EURO for a non-pecuniary loss, consisting of its reputation and credibility being undermined;
- Order the Commission to issue a public notice, informing the market and all users interested in CIRCA (an IT tool which enables the electronic collaboration among employees or groups of individuals located in different locations), that such is not an obsolete platform, that the platform developed by Alfresco Software Ltd. is not a privileged platform and that the users are free to select as a substitute for CIRCA the platform of their choice; and
- Order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission infringed the obligation arising from Articles 27, 88, 89 and 91 of the financial regulation⁽¹⁾, as well as of Articles 116, 122 and 124 of the implementing rules⁽²⁾, to conduct an open or restricted call for tenders.
2. Second plea in law, alleging that the Commission infringed the principles of non discrimination and equal treatment.
3. Third plea in law, alleging that the Commission infringed the principle of good administration and the obligation to state reasons.

4. Fourth plea in law, alleging that the Commission misused its powers.

⁽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 2002 L 248, p. 1)

⁽²⁾ Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1)

Action brought on 12 August 2011 — Charron Inox and Almet v Commission**(Case T-445/11)**

(2011/C 290/26)

*Language of the case: French***Parties**

Applicants: Charron Inox (Marseille, France) and Almet (Satolas-et-Bonce, France) (represented by: P.-O. Koubi-Flotte, lawyer)

Defendant: European Commission

Form of order sought

- first, annul Commission Regulation (EU) No 627/2011 of 27 June 2011;
- in the alternative, acknowledge the fault of the Commission which did not provide for a sufficient period of time between the publication of Commission Regulation (EU) No 627/2011 of 27 June 2011 and its entry into force, and award the following sums in damages to the applicant companies:
 - with regard to the damage caused:
 - for the company CHARRON: EUR 123 297,69;
 - for the company ALMET: EUR 384 210;
 - with regard to the indemnifiable loss of profit:
 - for the company CHARRON, with regard to the contract concluded with the company SURAJ, the sum of USD 78 051,76, or EUR 55 221,57;
 - for the company ALMET, with regard to the contract concluded with the company SURAJ, the sum of USD 69 059,18 or EUR 48 827,61 as at the current rate;

— in the further alternative, acknowledge the no-fault liability of the Commission which did not provide for a sufficient period of time between the publication of Commission Regulation (EU) No 627/2011 of 27 June 2011 and its entry into force, and award the following sums in damages to the applicant companies:

- with regard to the damage caused:
 - for the company CHARRON: EUR 123 297,69;
 - for the company ALMET: EUR 384 210;
- with regard to the indemnifiable loss of profit:
 - for the company CHARRON, with regard to the contract concluded with the company SURAJ, the sum of USD 78 051,76, or EUR 55 221,57;
 - for the company ALMET, with regard to the contract concluded with the company SURAJ, the sum of USD 69 059,18 or EUR 48 827,61 as at the current rate;

— in any case, order the European Commission to pay the costs and the sum of EUR 10 000 as a contribution to the applicant companies' defence costs.

Pleas in law and main arguments

In support of the action, the applicants rely on two pleas in law.

1. First plea, alleging serious inadequacies in the findings of the Commission before adoption of its decision such as to call into question the reliability of the facts established.
2. Second plea, alleging the failure to respect the principle of legitimate expectations, in so far as the immediate entry into force of the contested regulation meant that the applicants could not adapt their practices.

Appeal brought on 11 August 2011 by Europol against the judgment of the Civil Service Tribunal of 26 May 2011 in Case F-83/09 Kalmár v Europol

(Case T-455/11 P)

(2011/C 290/27)

Language of the case: Dutch

Parties

Appellant: Europol (represented by: D. Neumann, D. El Houry and J. Arnould, Agents, and by D. Waelbroeck and E. Antypas, lawyers)

Other party to the proceedings: Andreas Kalmár (The Hague, Netherlands)

Form of order sought by the appellant

The appellant claims that the Court should:

- set aside the judgment under appeal and give a ruling on the substance of this case, in so far as the Civil Service Tribunal
 - (a) annulled Europol's decision of 4 February 2009 whereby the Director of Europol terminated Mr Kalmár's fixed-term contract, the decision of 24 February 2009 whereby the Director of Europol relieved him of the duty to serve his period of notice, and the decision of 18 July 2009 rejecting his complaint;
 - (b) ordered Europol to pay damages of EUR 5 000 to Mr Kalmár; and
 - (c) ordered Europol to pay all the costs;
- order the respondent to pay all the costs of the proceedings at first instance and the costs incurred by him on appeal;

Pleas in law and main arguments

In support of the appeal, the appellant relies on six pleas in law.

1. First plea in law, alleging infringement of the prohibition on ruling *ultra petita* and of the rights of the defence. In the appellant's submission, the Civil Service Tribunal carried out an examination on the basis of complaints other than those put forward by the respondent.
2. Second plea in law, alleging an error of law in the assessment of the lawfulness of the contested decisions. The Civil Service Tribunal erred in its application *inter alia* of the duty of care and of the obligation to state reasons.
3. Third plea in law, alleging an error of law by the Civil Service Tribunal as regards the subject of the application for annulment. In the appellant's submission, the Civil Service Tribunal ought to have classified the decision of 18 July 2009 as a decision having an adverse effect which is also subject to judicial review.
4. Fourth plea in law, alleging numerous errors in the judgment of the Civil Service Tribunal according to which Europol 'did not' or 'did not carefully' take account of certain 'relevant and non-negligible facts' when taking the dismissal decision.
5. Fifth plea in law, alleging that the contested decision was insufficiently reasoned.
6. Sixth plea in law, alleging incorrect award of damages.