



## PRESS RELEASE No 199/24

Luxembourg, 18 December 2024

Judgment of the General Court in Case T-776/22 | TP v Commission

### **In order to exclude a company from EU public procurement and grant award procedures, the authorising officer responsible must conduct a specific and individual assessment of the conduct of the operator concerned**

In 2009, the European Commission launched a procurement procedure for the award of a public works contract in respect of the modernisation of a facility. The European Commission awarded that contract to two companies, including TP, which had concluded a consortium contract with each other beforehand. At the end of the works, upon detecting some defects at the facility, the Commission issued the consortium with an anticipated notice of termination of the contract. The Commission also initiated arbitration proceedings under the auspices of the International Chamber of Commerce (ICC). The arbitral tribunal ordered both companies to pay jointly and severally to the European Union an amount corresponding to the costs necessary to repair the facility. The arbitral tribunal also referred to **the conduct of the consortium as grossly negligent**.

In October 2022, the Commission adopted a decision under which **the company TP was excluded for a period of two years** from participating in public procurement and grant award procedures. In that regard, the Financial Regulation 2018 <sup>1</sup> provides that the authorising officer responsible may exclude a person or entity, inter alia, where that person or entity has shown significant deficiencies in complying with main obligations in the implementation of a legal commitment financed by the EU budget. In order to find that there was such a failure to comply, the Commission relied on the **joint and several liability of company TP as a member of the consortium**.

TP brought an action before the General Court of the European Union seeking the annulment of that decision.

First of all, the General Court considers that there is **no automatic link** between the finding of a failure to comply with contractual obligations and the adoption of an exclusion measure by the authorising officer responsible.

Next, it states that the authorising officer responsible must, before adopting an exclusion measure in respect of a person or entity concerned, **conduct a specific and individual assessment of the conduct of that person or entity, in the light of all the relevant factors**.

Since, in the present case, **the Commission merely relied on the joint and several liability** of the company TP, as a member of the consortium, **without taking into account the individual conduct of company TP**, the General Court **annuls the decision of the Commission**.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Jacques René Zammit ☎ (+352) 4303 3355.

Stay Connected!



<sup>1</sup> [Regulation \(EU, Euratom\) 2018/1046](#) of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012.