Reports of Cases

JUDGMENT OF THE GENERAL COURT (Sixth Chamber)

12 May 2016*

(Financial support — Research — Seventh Framework Programme for Research and Technical Development 2007-2013 — eDIGIREGION project — Commission decision refusing participation of an undertaking — Action for annulment — Time limit for bringing an action — Point from which time starts to run — Inadmissibility — Non-contractual liability — Non-material damage — Sufficiently serious breach of a rule of law conferring rights on individuals)

In Case T-468/14,

Holistic Innovation Institute, SLU, established in Pozuelo de Alarcón (Spain), represented initially by R. Muñiz García, and subsequently by J. Marín López, lawyers,

applicant,

v

European Commission, represented by R. Lyal, acting as Agent, and J. Rivas Andrés, lawyer,

defendant,

ACTION, first, for annulment of Commission Decision ARES (2014) 710158 of 13 March 2014 rejecting the applicant's participation in the eDIGIREGION project under Article 263 TFEU, and, second, an action for damages, under Article 268 TFEU, for harm that the applicant allegedly suffered as a result of that decision of EUR 3 055 000 plus interest accrued and, in the alternative, the appointment of an expert to evaluate the harm suffered,

THE GENERAL COURT (Sixth Chamber),

composed of S. Frimodt Nielsen, President, F. Dehousse (Rapporteur) and A.M. Collins, Judges,

Registrar: J. Palacio González, Principal Administrator,

having regard to the written part of the procedure and further to the hearing on 14 January 2016,

gives the following

* Language of the case: Spanish.

Judgment

Background to the dispute

1 The applicant, Holistic Innovation Institute SLU, is a Spanish company incorporated in June 2011 which is active mainly in telecommunications, development and telecommunications consulting services and research and innovation. Its single legal and administrative representative was previously president and administrator of R company which was put into voluntary liquidation in February 2012.

2 In 2012 and 2013 the applicant, together with 15 other undertakings and regional actors, was part of a consortium which submitted a proposal in order to take part in the eDIGIREGION project (Realising Digital Agenda Through Transnational Cooperation Between Regions).

3 That project aims to create a digital agenda through transnational cooperation between the regions. It was launched by the Commission of the European Communities pursuant to Decision No 1982/2006/EC of the European Parliament and of the Council of 18 December 2006 concerning the seventh framework programme of the European Community for research, technological development and demonstration activities (2007-2013). The eDIGIREGION project was planned for a period of 36 months and the financial contribution of the European Union was up to a maximum of EUR 2 999 971.

4 As the proposal submitted to the Commission by the consortium obtained the total score of 13 out of 15 in the first evaluation, the negotiation phase with the Commission began in February 2013.

5 In April 2013, the Commission received further information concerning, inter alia, the results of audits which had been previously undertaken with respect to R company, there being similarities between the applicant and R company, as well as other aspects related to the applicant's operational and financial capacity.

6 By emails of 28 and 29 May, 12 and 19 June and 2 July 2013, the Commission requested the applicant to provide information concerning its financial and operational data, in particular, in terms of the capacity of its staff. The applicant's representative responded by emails of 29 May, 4, 13 and 19 June 2013.

7 By an undated letter, which the file shows was written on 20 September 2013, the Commission indicated to the applicant that it had carried out a detailed assessment of its operational and financial capacity, on completion of which the Commission concluded that the applicant had failed to demonstrate its ability to perform the tasks specified in the draft project. Therefore, the Commission took the view that the applicant should be excluded from participating in the eDIGIREGION project.

8 By letter of 30 September 2013, the applicant confirmed to the Commission that it had received the letter informing it that its application to participate in the eDIGIREGION project had been rejected. The applicant challenged that rejection, stated that it was prepared to provide the evidence necessary to demonstrate its operational and financial capacity, and requested the Commission to reconsider its assessment.

9 By letter of 15 October 2013, the Commission acknowledged receipt of that complaint and stated that the applicant would receive a response in November 2013.

10 In October and November 2013, exchanges of emails took place between the applicant's representative, on one hand, and the Commission and the coordinator of the eDIGIREGION project on the other. In its letter of 29 November 2013, the Commission informed the applicant that it had not intentionally delayed the negotiations, disclosed confidential information, or put any pressure whatsoever on third

parties which might have led to the applicant's exclusion from participating in the project. It confirmed to the applicant that it was in the process of re-evaluating the information on which it had based the decision to exclude the applicant's participation in the eDIGIREGION project, and stated that if that new assessment led to favourable conclusions it would not oppose the applicant re-joining the consortium. However, the Commission informed it that that new evaluation might lead to the suspension of the negotiations.

11 By letter of 20 December 2013, the Commission confirmed, after detailed reasoning, its assessment that the applicant's participation in the eDIGIREGION project had to be refused on the ground that it did not have sufficient management and administrative capacity, that it had given an incorrect impression of its technical and scientific capacities, and that it had a low co-financing capacity.

12 On 14 January 2014, the applicant sent to a member of the Commission with responsibility for research, innovation and science a letter challenging its assessment, to which was attached an annex containing its arguments in response to the Commission's argument of 20 December 2013.

13 By registered letter with acknowledgement of receipt sent on 13 March 2014 and received on 21 March 2014, to which an annex was attached containing a detailed answer to the applicant's arguments, the Commission informed the latter that it confirmed the finding previously communicated by letter of 20 December 2013, that its decision to exclude the applicant from the negotiations was now final and that the applicant could bring an appeal before the General Court, pursuant to Article 263 TFEU, within two months from the notification of that letter. The Commission stated that the applicant's answers to that letter would not have the effect of suspending the time limit for the appeal.

14 By letter of 2 April 2014, the applicant informed the Commission that it regarded that assessment as incorrect and that it intended to bring an action challenging that assessment.

15 On 12 May 2014, the Commission replied to the applicant that the reasons for refusing its participation had been previously explained and as no new information had been produced, it had no further comments to make.

16 The grant agreement was signed without the applicant on 28 March 2014.

Procedure and forms of order sought

17 By application lodged at the Registry of the General Court on 24 June 2014 the applicant brought the present action.

18 On hearing the report of the Judge-Rapporteur, the Court (Sixth Chamber) decided to open the oral procedure. By way of measures of organisation of procedure provided for in Article 89 of its Rules of Procedure, the General Court asked the parties to reply in writing to a question concerning the admissibility of the action for damages. The parties complied with that request within the period prescribed.

19 The parties presented oral argument and replied to the Court's oral questions at the hearing on 14 January 2016.

20 The applicant claims that the Court should:

— annul the Commission's decision to exclude it from the eDIGIREGION project;

— order a report and appoint an expert to evaluate the economic loss suffered;

— take evidence from certain project coordinators;

— order the Commission to pay damages and interest of EUR 3 055 000, plus the accrued interest for the harm suffered or, in the alternative, to pay the amount determined by the legal expert;

— publish the judgment of the General Court to be delivered in the specialist media and, at least, in certain Commission bulletins;

— order the Commission to pay the applicant's costs.

21 The Commission contends that the Court should:

— declare the application inadmissible or, in the alternative, dismiss it as unfounded;

— dismiss the claim for compensation as unfounded;

— order the applicant to pay the costs.

Law

The action for annulment

22 The Commission submits that the action for annulment is out of time and is, thus, inadmissible. It states that the contested decision was notified to the applicant on 21 March 2014 but that the action was not filed until 24 June 2014, that is, after the expiry of the time limit for bringing proceedings. In the rejoinder, it adds that the contested decision produces legal effects from the date of its notification to the addressee, without its publication being necessary. Moreover, the original version of the digitally signed application was sent by email on 20 May 2014, whereas the only electronic method of lodging procedural documents is the e-Curia application. Furthermore, the original of the signed application was received only on 14 June by the Registry, that is, after the additional 10 days provided for by Article 43(6) of the Rules of Procedure of the General Court of 2 May 1991.

23 The applicant argues that the action is admissible. It states that the time limit for bringing proceedings runs from the publication of the contested decision but that the defence does not mention a date of publication. It also submits that the action, signed by digital certificate, was lodged within the time limit for bringing proceedings even before the contested decision was published. It adds that the period granted by the General Court within which to put the action in order was observed. At the hearing it relied on the need to observe the right to an effective remedy and the existence of an excusable error.

24 It must be recalled that, under Article 263, sixth paragraph, TFEU, the proceedings provided for in that article are to be instituted within two months of the publication of the measure, or of its notification to the plaintiff, or, in the absence thereof, of the day on which it came to the knowledge of the latter, as the case may be. It is also apparent from Article 297(2), third paragraph, TFEU that decisions which specify to whom they are addressed, as is the situation in the present case, are to be notified to those to whom they are addressed and are to take effect upon such notification. Under Article 102(2) of the Rules of Procedure of 2 May 1991, the period of time allowed for commencing proceedings is to be extended on account of distance by a single period of 10 days.

25 According to settled case-law, the time limit for bringing an action is a matter of public policy since it was established in order to ensure that legal positions are clear and certain and to avoid any discrimination or arbitrary treatment in the administration of justice, and the European Union Courts

must ascertain of their own motion whether that time limit has been observed (judgments of 23 January 1997 in *Coen*, C-246/95, EU:C:1997:33, paragraph 21, and 6 December 2012 in *Evropaïki Dynamiki* v *Commission*, T-167/10, not published, EU:T:2012:651, paragraph 37).

26 In the present case, the contested decision is contained in the Commission's letter of 13 March 2014, sent by recorded delivery with acknowledgement of receipt by the applicant. It not disputed that the applicant received the letter on 21 March 2014. Furthermore, that letter stated that the decision to exclude the applicant from the negotiations was final, and that it could bring an appeal before the General Court pursuant to Article 263 TFEU within two months from the notification of the letter concerned. That letter also stated that the applicant's response would not have the effect of suspending the time limit for bringing proceedings.

27 Therefore, contrary to the applicant's assertions in the reply, the contested decision did not have to be published and, taking account of the extension on account of distance, the time limit for bringing proceedings expired on 2 June 2014.

28 It is true that the applicant sent an originating application by email on 20 May 2014. However, it must be recalled that, under Article 43(6) of the Rules of Procedure of 2 May 1991, the date on which a copy of the signed original of a pleading is received at the Court Registry by fax or by email is deemed to be the date of lodgement for the purposes of compliance with the time limits for taking steps in proceedings only if the signed original of the pleading is lodged at the Registry no later than 10 days after receipt of the fax or email.

29 In the present case, the original of the application was not lodged at the registry until 6 June 2014, that is, after the time limit of 10 days laid down in Article 43(6) of the Rules of Procedure of 2 May 1991.

30 Furthermore, that original did not bear the handwritten signature of the applicant's lawyer, but the handwritten signature of the applicant and the copy of its lawyer's signature.

31 The failure to submit the original application signed by a duly authorised lawyer is not among the formal irregularities that are capable of being rectified under Article 44(6) of the Rules of Procedure of 2 May 1991. That requirement must therefore be regarded as an essential procedural rule and be applied strictly, so that failure to comply with it leads to the inadmissibility of the action (judgment of 22 September 2011 in *Bell & Ross* v *OHIM*, C-426/10 P, EU:C:2011:612, paragraph 42; order of 21 September 2012 in *Noscira* v *OHIM*, C-69/12 P, not published, EU:C:2012:589, paragraphs 22 and 23, and judgment of 23 May 2007 in *Parliament* v *Eistrup*, T-223/06 P, EU:T:2007:153, paragraphs 48 and 51).

32 The applicant's argument that the error committed was excusable on the ground that, in Spanish law, the absence of the lawyer's signature on the originating application is rectifiable, must be rejected. The concept of excusable error must be strictly construed and can concern only exceptional circumstances (judgment of 22 September 2011 in *Bell & Ross* v *OHIM*, C-426/10 P, EU:C:2011:612, paragraph 47). The preparation, supervision and verification of procedural documents to be lodged at the Registry are the responsibility of the lawyer of the party concerned and, in the present case, the applicant's arguments based on national law do not support the finding of the existence of exceptional circumstances within the meaning of the applicable case-law.

33 Moreover, the fact that the absence of the lawyer's signature on the originating application is not rectifiable in EU law (see paragraph 31 above) does not affect the right to an effective remedy. The strict application of those procedural rules serves the requirements of legal certainty and the need to avoid any discrimination or arbitrary treatment in the administration of justice. Although the conditions governing the submission of applications as well as the time limits for bringing an action restrict the right of judicial access, those limitations clearly do not constitute an impairment to the

very essence of that right, a fortiori as the rules in question are clear and do not pose any particular difficulty of interpretation (see, to that effect, order of 21 September 2012 in *Noscira* v *OHIM*, C-69/12 P, not published, EU:C:2012:589, paragraphs 33 to 35 and the case-law cited).

34 It follows that the conditions in Article 43(6) of the Rules of Procedure of 2 May 1991 were not complied with so that the fact that the applicant sent the application of 20 May 2014 does not constitute valid lodgement of the application.

35 Furthermore, the applicant submits that it lodged an action signed by way of a digital certificate within the period for bringing proceedings. However, the action initiated through e-Curia on 24 June 2014 is also out of time with regard to the time limit which expired on 2 June 2014.

36 It follows that the action for annulment must be rejected as inadmissible, without there being any need to examine the arguments on the substance submitted by the applicant.

The action for damages

37 First, the applicant submits that the contested decision constitutes an unlawful act which has given rise to serious economic consequences for it. It relies on loss of income with respect to the eDIGIREGION project and other projects, and points out the negative impact on institutional clients and on its competitiveness. It assesses its damages at EUR 3 055 000 and also requests the appointment of an expert in order to evaluate the economic loss suffered. Second, it relies on the harm suffered as a result of denigration by the Commission affecting its credibility and in that regard it requests the publication and communication of the General Court's decision.

38 Questioned by the General Court on the admissibility of the action for damages, the applicant pointed out that the Commission has not pleaded the inadmissibility of that action, which it submits is admissible.

39 The Commission challenges those arguments and, in reply to a question from the General Court, pleads the inadmissibility of the action for damages.

40 It must be recalled that, under Article 340, second paragraph, TFEU regarding non-contractual liability, the EU is, in accordance with the general principles common to the laws of the Member States, to make good any damage caused by its institutions or by its servants in the performance of their duties.

41 In accordance with settled case-law, for the EU to incur non-contractual liability under the abovementioned provision for unlawful conduct on the part of its institutions, a set of conditions must be fulfilled, namely the unlawfulness of the acts alleged against the institutions, the fact of damage and the existence of a causal link between that conduct and the damage complained of (judgments of 29 September 1982 in *Oleifici Mediterranei* v *EEC*, 26/81, EU:C:1982:318, paragraph 16; 9 September 2008 in *FIAMM and Others* v *Council and Commission*, C-120/06 P and C-121/06 P, EU:C:2008:476, paragraphs 106 and 164 to 166; and 16 October 2014 in *Evropaïki Dynamiki* v *Commission*, T-297/12, not published, EU:T:2014:888, paragraph 28). Furthermore, as regards the condition relating to the unlawfulness of the alleged conduct of the institution or body concerned, the case-law requires there to be established a sufficiently serious breach of a rule of law intended to confer rights on individuals. The decisive test for finding that a breach of EU law is sufficiently serious is whether the EU institution concerned manifestly and gravely disregarded the limits on its discretion (see, to that effect, judgments of 4 July 2000 in *Bergaderm and Goupil* v *Commission*, C-352/98 P, EU:C:2000:361, paragraphs 42 to 44; 17 March 2005 in *AFCon Management Consultants and Others* v *Commission*, T-160/03, EU:T:2005:107, paragraph 93; and 16 October 2014 in *Evropaïki Dynamiki* v *Commission*, T-297/12, not published, EU:T:2014:888, paragraph 29).

42 As regards the requirement relating to reality of the damage, the European Union can incur liability only if the applicant has actually suffered a real and certain loss, which is for the applicant to prove (judgments of 14 October 2014 in *Giordano* v *Commission*, C-611/12 P, EU:C:2014:2282, paragraph 36, and 16 October 2014 in *Evropaïki Dynamiki* v *Commission*, T-297/12, not published, EU:T:2014:888, paragraph 30).

43 As regards the condition relating to the existence of a causal link between the conduct alleged and the loss pleaded, it is settled case-law that the alleged loss must be a sufficiently direct consequence of the conduct complained of and such a causal link must be the determining cause of the loss, which is for the applicant to prove (judgments of 30 January 1992 in *Finsider and Others* v *Commission*, C-363/88 and C-364/88, EU:C:1992:44, paragraph 25, and 20 September 2011 in *Evropaïki Dynamiki* v *EIB*, T-461/08, EU:T:2011:494, paragraph 209).

44 If one of the three conditions for the EU's non-contractual liability is not satisfied the action for damages must be dismissed in its entirety without its being necessary to examine whether the other two preconditions are satisfied (judgment of 16 October 2014 in *Evropaïki Dynamiki* v *Commission*, T-297/12, not published, EU:T:2014:888, paragraph 33; see also, to that effect, judgment of 15 September 1994 in *KYDEP* v *Council and Commission*, C-146/91, EU:C:1994:329, paragraph 81).

45 It should also be recalled that, according to settled case-law, a claim for damages based on the second paragraph of Article 340 TFEU is an independent form of action in the system of remedies available in EU law, so that the fact that an application for annulment is inadmissible does not in itself render a claim for damages inadmissible (judgments of 15 March 1995 in *COBRECAF and Others* v *Commission*, T-514/93, EU:T:1995:49, paragraph 58, and 17 October 2002 in *Astipesca* v *Commission*, T-180/00, EU:T:2002:249, paragraph 139).

46 However, although a party may take action by means of a claim for compensation without being obliged by any provision of law to seek the annulment of the illegal measure which causes him damage, he may not by those means circumvent the inadmissibility of an application which concerns the same instance of illegality and which has the same financial end in view (order of 26 October 1995 in *Pevasa and Inpesca* v *Commission*, C-199/94 P and C-200/94 P, EU:C:1995:360, paragraph 27).

47 Thus, an action for damages must be declared inadmissible where it is actually aimed at securing withdrawal of an individual decision which has become definitive and would, if upheld, have the effect of nullifying the legal effects of that decision (see, to that effect, judgments of 15 January 1987 in *Krohn Import-Export* v *Commission*, 175/84, EU:C:1987:8, paragraphs 32 and 33; 15 March 1995 in *COBRECAF and Others* v *Commission*, T-514/93, EU:T:1995:49, paragraph 58 and 59; and 17 October 2002 in *Astipesca* v *Commission*, T-180/00, EU:T:2002:249, paragraph 140). That is the case if the applicant seeks, by way of a claim for damages, to obtain a result which is identical to that he would have obtained from the success of an action for annulment which it failed to bring in good time (see, to that effect, order of 4 October 2010 in *Ivanov* v *Commission*, C-532/09 P, not published, EU:C:2010:577, paragraph 24).

48 Furthermore, an action for damages may also able to nullify the legal effects of a decision which has become final where the applicant seeks a greater benefit, but including that which it could obtain from an annulling judgment. In such a case, it is however necessary to establish the existence of a close connection between the action for damages and the action for annulment in order to conclude that the former is inadmissible (order of 24 May 2011 in *Power-One Italy* v *Commission*, T-489/08, not published, EU:T:2011:238, paragraph 46).

49 It must be added that the admissibility of the claim for damages may be examined by the court of its own motion as it concerns public policy (judgment of 17 October 2002 in *Astipesca* v *Commission*, T-180/00, EU:T:2002:249, paragraph 139).

50 It is in the light of those findings that the applicant's arguments claiming economic loss and non-material damage must be examined.

Economic loss

51 The applicant submits that the economic loss it has suffered falls into three separate categories.

52 First, it claims the reimbursement of EUR 438 165 corresponding to the loss of the grant linked to the eDIGIREGION project.

53 It must be held that that claim seeks payment of an amount which corresponds exactly to that of the income of which it is deprived as a result of the contested decision. Therefore, it indirectly seeks the annulment of the individual decision which excluded the applicant from the project and seeks the same result as that pursued by the action for annulment.

54 The action for annulment against the decision to exclude the applicant from the eDIGIREGION project was previously declared inadmissible (paragraph 36 above) and that decision has therefore become definitive.

55 Therefore, the action for damages for the loss of the grant of EUR 438 165 for that project is inadmissible, in accordance with the case-law cited in paragraphs 46 and 47 above.

56 Second, the applicant claims essentially to have sustained damage as a result of the loss of planned resources for 2014, 2015 and 2016 of EUR 146 055 for each of those three years. In the reply, it describes damage which corresponds to the additional advantages deriving from the project and an amount greater than that assigned to its budget, and damage related to the effect on its future competitiveness and the failure to reward it for its skills and knowledge.

57 That claim also seeks payment of a sum that the applicant was deprived of as a result of the contested decision. By that claim it seeks to be placed in the financial position that it would have enjoyed in the absence of the decision excluding it from the project. The claim for payment of those amounts thus has a close connection, within the meaning of the case-law cited in paragraph 48 above, with the annulment of the decision to exclude it from the project. Therefore, such a claim is also inadmissible.

58 Additionally, even though that connection with the action for annulment would not be regarded as close enough to lead to the inadmissibility of the action for damages for damage related to the loss of planned resources, it should in any event be rejected as unfounded. The figures mentioned concerning the loss of planned resources for 2014, 2015 and 2016 have not been substantiated in any way. Further, the EU is liable only if the applicant has actually suffered real and certain loss, which it must prove in accordance with the case-law cited in paragraph 42 above. The planning mentioned is not evidence of real and certain loss within the meaning of the case-law. The same is true for the harm related to the effect on the applicant's future competitiveness and the failure to appreciate its capacities.

59 Therefore, that claim is inadmissible and, in any event, unfounded.

60 Third, as regards the loss of income relating to projects other than the eDIGIREGION project, the applicant mentions the INACHUS and ZONeSEC projects. It mentions both the amounts related to the projects themselves, namely grants of EUR 359 500 for the INACHUS project and EUR 421 750 for the ZONeSEC project and the amounts corresponding to planned resources for 2014 to 2017.

61 However, it must be observed that the figures mentioned by the applicant are not substantiated in any way. In addition, the projects mentioned are not referred to in the Commission decision of 13 March 2014. That decision concerns only the eDIGIREGION project and the Commission also clearly stated in it that it was without prejudice to the decision to be taken concerning the other proposed projects with which the applicant was involved.

62 Therefore, the causal link between the Commission's conduct which led to the decision of 13 March 2014 on one hand and any damage suffered with regard to those projects on the other is not established.

63 Therefore, the claim concerning the other projects must also be rejected.

64 It follows that the applicant's claim for damages for economic loss must be rejected in its entirety.

Non-material damage

65 First, it appears from the applicant's pleadings that it claims to have suffered non-material damage by reason of the Commission's conduct, which it describes as denigrating and which has undermined its credibility and reputation. It also claims that by applying pressure the Commission delayed the negotiation procedures in order to stigmatise it as an unwanted participant in European projects. By way of redress, it requests the publication of the General Court's decision in certain Commission bulletins and its communication to the members of the consortia it was part of for which the projects have been suspended or postponed.

66 It must be observed that that request, if accepted, does not have the effect of nullifying the legal effects of the contested decision. In fact it does not seek to obtain the same result as that which the applicant would have obtained by the success of an action for annulment of the contested decision. Therefore, that claim is admissible in the light of the case-law set out in paragraphs 46 to 48 above.

67 Furthermore, in support of its arguments, the applicant claims that members of the Commission's staff used their influence in order to exclude it from European research projects. It states, in particular, that its dispute with the Commission concerning the eDIGIREGION project has repercussions for two other projects, in the present case the ZONeSEC and INACHUS projects, in that the Commission informed the other associates of its problems in participating in European projects. In order to support its assertions, the applicant produces an exchange of emails.

68 That line of argument must be rejected.

69 First, as far as concerns the emails concerning the ZONeSEC and INACHUS projects, it must be observed that the applicant does not expressly mention which rule of law conferring rights on individuals has been breached in the present case. Neither does it establish that the Commission engaged in unlawful conduct constituting a sufficiently serious breach of such a rule of law.

70 In that connection, in its email of 12 September 2001 sent to Mr S., a shareholder of the applicant, the coordinator of the INACHUS project mentioned comments by the Commission of importance to the applicant requiring immediate discussion. However, no information is provided regarding the content of those comments. Furthermore, in an email in reply of 17 September 2013, the applicant sent a description of its organisation. Therefore, it is entirely possible that the Commission's comments requiring immediate discussion specifically concerned that purely technical matter.

71 Similarly, in the context of the ZONeSEC project, on 15 January 2014 the applicant itself sent an email to the project coordinator in which it mentioned the difficulties between the previous company, R company, and the Research Executive Agency and proposed other undertakings to replace it if those

difficulties jeopardised the signature of the ZONeSEC contract. The project coordinator then sent an email of 25 February 2014 to those participating in the project, in which he mentioned budgetary difficulties to be resolved and indicated that that delay might be due to the need to wait for the decision of the Research Executive Agency with regard to the applicant.

72 It follows from the foregoing that the evidence produced by the applicant in no way supports its statements concerning the Commission's allegedly denigrating attitude.

73 Second, the applicant produces emails relating to other projects, in the present case, ClusMED, Global ITV and INSO 2. However, those documents are not relevant since they concern the applicant's shareholder Mr S., who is not a party to the present action, and not the applicant. The argument that all the harm suffered by the applicant has repercussions for the latter does not invalidate that finding.

74 Third, the applicant complains that, in relation to the eDIGIREGION project, the Commission, by using its influence, delayed the negotiation procedures in order to stigmatise it.

75 It should be stated that the negotiations with the Commission, which were to have been completed on 20 March 2013, ended in November 2013. It has not been established that during that period the Commission stigmatised the applicant. To the contrary, it is apparent from the documents in the file, set out in paragraphs 5 to 10 above, that that period was used by the Commission, in the interests of sound financial management, to carry out a detailed examination of the applicant's position with regard to the conditions required to participate in the eDIGIREGION project, to clarify the information in the file, and to explain to it the reasons why its participation in the project had been refused.

76 In light of the information in the file, it must be held that the applicant has failed establish the existence of unlawful or denigrating conduct by the Commission.

77 Therefore, the applicant's claim for damages for injury to its reputation by reason of the Commission's conduct must be rejected, without there being any need to examine whether the conditions related to the existence of damage and causal link have been met.

78 Second, at the hearing the applicant also relied on non-material damage, consisting of damage to its reputation related to the adoption of the contested decision.

79 The General Court recalls that it follows from Article 44(1)(c) in conjunction with Article 48(2) of the Rules of Procedure of 2 May 1991 that the original application must contain the subject matter of the proceedings and a summary of the pleas in law relied on, and that new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure. However, a plea or an argument which amplifies a plea put forward previously, whether directly or by implication, in the original application, and which is closely connected therewith, must be declared admissible (judgment of 11 July 2013 in *Ziegler* v *Commission*, C-439/11 P, EU:C:2013:513, paragraph 46). The same applies to a submission made in support of a plea in law (judgment of 19 May 2010 in *Boliden and Others* v *Commission*, T-19/05, EU:T:2010:203, paragraph 90).

80 In the present case the applicant's submission that it suffered non-material damage as a result of the contested decision does not appear in the application and is not based on any matters of law or of fact relied on during the proceedings. Moreover, it is not an amplification of a plea previously relied on. The non-material damage mentioned in the application and examined in paragraphs 65 to 76 above was invoked by reason of the Commission's conduct and not in relation to the contested decision.

81 Therefore, the complaint claiming the existence of non-material damage relating to the adoption of the contested decision must be rejected as being new and, therefore, inadmissible in accordance with Article 48(2) of the Rules of Procedure of 2 May 1991.

82 In any event, even if it were not a new complaint, it must be held that the applicant's claim in that regard contains no figures and indirectly seeks a declaration that its participation in the eDIGIREGION project should not have been excluded. In other words, such a claim seeks essentially to obtain the same result as that which it is deprived of by reason of the fact that its action for annulment was out of time. Therefore, it appears to be closely connected to the action for annulment, within the meaning of the case-law set out in paragraphs 46 to 48 above, and therefore must be dismissed in accordance with that case-law.

83 Further, the applicant fails to provide any information supporting the existence of damage to its reputation linked to the contested decision. In that connection, the decision rejecting its participation in the project, although unfavourable, cannot in itself, be regarded as injuring its reputation. The consequences related to the adoption of such a decision are part of the risks to which all experienced economic operators are exposed when they take part in such a procedure. It follows that the damage to reputation supposedly connected to the contested decision is not established.

84 Therefore, the claim for compensation for non-material damage, whether it is connected to the Commission's conduct or the contested decision, must be dismissed.

85 It follows from all of the foregoing that the applicant's action for damages must be dismissed in its entirety, without there being any need to accede to its request to order a report or to appoint an expert or to its request for a measure of organisation of procedure to take statements from the project coordinators. Likewise, its request to publish the General Court's judgment must be dismissed.

86 The present action must therefore be rejected in its entirety.

Costs

87 Under Article 134(1) of the Rules of Procedure of the General Court, 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 applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE GENERAL COURT (Sixth Chamber)

hereby:

1. Dismisses the action;

2. Orders Holistic Innovation Institute SLU to pay the costs.

Frimodt Nielsen Dehousse Collins

Delivered in open court in Luxembourg on 12 May 2016.

[Signatures]