

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

8 July 2015 (*) (1)

(Public service contracts — Tender procedure — Provision of computing services for the development and maintenance of software, consultancy and assistance for different types of IT applications — Ranking of a tenderer's bid in the cascade for different lots and ranking of the bids of other tenderers — Obligation to state reasons — Award criterion — Manifest error of assessment — Non-contractual liability)

In Case T-536/11,

European Dynamics Luxembourg SA, established in Ettelbrück (Luxembourg),

European Dynamics Belgium SA, established in Brussels (Belgium),

Evropaïki Dynamiki — Proigmaena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE, established in Athens (Greece),

represented by N. Korogiannakis, M. Dermitzakis and N. Theologou, lawyers,

applicants,

v

European Commission, represented initially by S. Delaude and V. Savov, and subsequently by S. Delaude, acting as Agents, and by O. Graber-Soudry, Solicitor,

defendant,

ACTION for annulment of the decision of the Publications Office of the European Union of 22 July 2011 to rank the applicants, in respect of the bids they submitted in response to the call for tenders AO 10340, concerning the provision of computing services for the development and maintenance of software, consultancy and assistance for different types of IT applications (OJ 2011/S 66-106099), in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place in the cascade for lot 3, as well as the decisions awarding the contracts at issue to other tenderers in as much as they refer to their ranking, and, second, for damages,

THE GENERAL COURT (Ninth Chamber),

composed of O. Czúcz, acting as President, I. Pelikánová and A. Popescu (Rapporteur),
Judges,

Registrar: L. Grzegorzcyk, Administrator,

having regard to the written part of the procedure and further to the hearing on 25 September 2014,

gives the following

Judgment

Background to the dispute

- 1 By a contract notice of 5 April 2011, published in the Supplement to the *Official Journal of the European Union* (OJ 2011/S 66-106099), with a corrigendum published in the *Official Journal* (JO 2011/S 70-113065), the Publications Office of the European Union (PO) launched call for tenders AO 10340 ('Computer services for software development and maintenance, consultancy and assistance for different types of information technology applications').
- 2 According to the contract notice, the computing services in question were divided into four lots, the following three of which are relevant to this action:
 - lot 1, concerning 'support and specialised administrative applications';
 - lot 3, concerning 'production and reception chains';
 - lot 4, concerning 'consultancy and assistance services regarding management of information technology projects'.
- 3 The purpose of the call for tenders was to conclude new framework service contracts for each lot that would replace the framework contracts due to expire.
- 4 In the tender specifications, the PO stated that, for each lot, tenderers would be selected according to 'the cascade mechanism' ('the cascade') and that, for each lot, framework contracts would be signed, for a term of four years, with the tenderers who submitted the three best bids. When the specific contracts were awarded for each lot, the economic operator whose bid was considered to present the best value for money was contacted first. If that first operator was unable to provide the service requested or was not interested, the second best operator was contacted. If the latter was unable to provide the requested service or was not interested, the third best operator was then contacted.
- 5 Section 2.1 of the tender specifications stated that the assessment would consist of three main stages: a first stage, during which exclusion criteria would be applied (Section 2.5 of the tender specifications); a second stage, during which selection criteria would be implemented (Section 2.6 of the tender specifications); and a third stage, during which a technical and financial assessment of the bid would be carried out in the light of the award criteria (Sections 2.7 and 2.8 of the tender specifications).
- 6 In respect of the technical evaluation for lots 1 and 3, the tender specifications set out, in Section 2.7.2, five award criteria, as follows:
 - criterion 1: 'Overall quality of the presentation of the tenderer's response' (for lot 1, 'criterion 1.1' and, for lot 3, 'criterion 3.1') (maximum number of points: 5 out of 100);
 - criterion 2: 'Tenderer's approach to the quality assurance and to project management to be used during the execution of the contract' (for lot 1, 'criterion 1.2' and, for lot 3, 'criterion 3.2') (maximum number of points: 40 out of 100);
 - criterion 3: 'Technical merits of the human resources for the execution of the tasks' (for lot 1, 'criterion 1.3' and, for lot 3, 'criterion 3.3') (maximum number of points: 25 out of 100);

- criterion 4: ‘Tenderer’s proposal for a take-over and hand-over’ (for lot 1, ‘criterion 1.4’ and, for lot 3, ‘criterion 3.4’) (maximum number of points: 10 out of 100);
 - criterion 5: ‘Tenderer’s proposal for a [service level agreement]’ (for lot 1, ‘criterion 1.5’ and, for lot 3, ‘criterion 3.5’) (maximum number of points: 20 out of 100).
- 7 In respect of the technical evaluation for lot 4, the tender specifications set out, at Section 2.7.2, three award criteria, as follows:
- criterion 1: ‘Overall quality of the presentation of the tenderer’s response’ (‘criterion 4.1’) (maximum number of points: 5 out of 100);
 - criterion 2: ‘Tenderer’s approach to the quality assurance and to project management to be used during the execution of the contract’ (‘criterion 4.2’) (maximum number of points: 55 out of 100);
 - criterion 3: ‘Technical merits of the human resources for the execution of the tasks’ (‘criterion 4.3’) (maximum number of points: 40 out of 100).
- 8 For each lot, the award criteria represented a total of 100 points. Only bids obtaining at least half the points for each criterion and a total score of at least 65 points could be considered for the award of the contracts. Each bid was evaluated for the purpose of determining to what extent it satisfied the stated requirements, the successful bid being that which represented the best value for money. Quality, namely the technical evaluation, counted for 50% and price, namely the financial evaluation, counted for 50% (Section 2.9 of the tender specifications).
- 9 On 17 May 2011, the applicants, European Dynamics Luxembourg SA, European Dynamics Belgium SA, and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE, in the form of a consortium, submitted bids for lots 1, 3 and 4.
- 10 On 1 July 2011, the evaluation report was drawn up for lots 1 and 4, and, on 4 July 2011, for lot 3, in accordance with Article 147(1) of 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, ‘the implementing rules’).
- 11 On 13 July 2011, the comité des achats et marchés, the Publication Office’s advisory body in the field of public procurement, delivered a favourable opinion on the award decision for lots 1, 3 and 4, as recommended by the evaluation committees in their reports. On 14 July 2011, the authorising officer by sub-delegation adopted the award decision, in line with that opinion and the recommendations of the evaluation committee.
- 12 On 18 July 2011, the evaluation committee adopted a correction to its original report of 1 July 2011 concerning the evaluation of lot 1. On 21 July 2011, the comité des achats et marchés of the PO sent a note to the authorising officer by sub-delegation, informing him of the correction to its opinion of 13 July 2011 concerning lot 1. On 22 July 2011, a corrected award decision was adopted by the authorising officer by sub-delegation, on account of a calculation error in the evaluation report for lot 1.
- 13 By letter of 22 July 2011, the PO notified the applicants of the ranking of their bids for each of the relevant lots, namely third place in the cascade for lot 1, third place in the

cascade for lot 4 and second place in the cascade for lot 3, and of the names of the other tenderers whose bids had been successful for lots 1, 3 and 4 ('the successful tenderers'). It stated that for lot 1, the bids submitted by the Sword-Siveco consortium ('Sword-Siveco') and by Logica Luxembourg ('Logica') had been ranked in first and second place, respectively, in the cascade; for lot 3, the bid submitted by ARHS Cube had been ranked in first place in the cascade; and for lot 4, the bids submitted by Novitech and Logica had been ranked in first and second place, respectively, in the cascade ('the other successful tenderers'). The PO also specified the scores awarded in respect of those bids at the technical evaluation stage, the prices proposed in those bids and their price-quality ratio. Lastly, it stated that the applicants were entitled to request additional information on the ranking of their bids in the cascade for each of the relevant lots and on the characteristics and advantages of the bids which were ranked higher than theirs.

- 14 By letter dated 22 July 2011, the applicants requested the following information from the PO: first, the names of the potential subcontractor (or subcontractors) forming part of the consortia of the other successful tenderers and the percentages of the contract allocated to it (or them); second, the scores awarded, for each of the technical award criteria, to all of their bids and to the bids of the other successful tenderers; third, an analysis of the strengths and weaknesses of both their bids and the bids of the other successful tenderers; fourth, the relative advantages and the additional or better services offered by the other successful tenderers in their bids; fifth, a detailed copy of the evaluation report; and, sixth, the names of the evaluation committee members.
- 15 On 27 July 2011, the PO informed the applicants, for lots 1, 3 and 4, of the names of the subcontractors forming part of the consortia of the other successful tenderers and the percentages of the contract allocated to them. The PO also sent the applicants an extract of the evaluation reports containing information on their bids and on the bids submitted by the other successful tenderers for those lots. Lastly, it informed the applicants that the names of the evaluation committee members could not be disclosed.
- 16 By letter of 5 August 2011, the applicants complained about the succinct and limited nature of the information provided by the PO through the extracts of the evaluation committee's reports. They alleged numerous errors of assessment, which were serious and manifest, affecting the evaluation of their bids.
- 17 By letter of 29 August 2011, the PO notified the applicants that it maintained the award decisions concerning the contracts in question. It also informed them of its decision to proceed with the signature of the framework contracts with the successful tenderers.

Procedure and forms of order sought

- 18 By application lodged at the Court Registry on 2 October 2011, the applicants brought the present action.
- 19 As the composition of the Chambers of the Court changed, the designated Judge-Rapporteur was assigned to the Ninth Chamber, to which the present case was accordingly allocated. As a Member of the Ninth Chamber was unable to sit in the present case, the President of the Court designated another judge to complete the Chamber, pursuant to Article 32(3) of the Rules of Procedure of the General Court of 2 May 1991.
- 20 On a proposal from the Judge-Rapporteur, the Court (Ninth Chamber) decided to open the oral part of the procedure. At the hearing on 25 September 2014, the parties presented oral argument and answered the questions put to them by the Court.

- 21 At the hearing, the Commission produced a document entitled ‘Corrigendum to Report of works of the Evaluation Committee evaluating offers submitted in response to the call for tenders No 10340 lot 1’ and the applicants did not object to its being placed on the file.
- 22 The applicants claim that the Court should:
- annul the decision of the PO of 22 July 2011 to rank their bids in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place in the cascade for lot 3;
 - annul all related decisions by the PO, in particular those ‘to award the respective contract[s] to the first and second cascade contractors’;
 - order the PO, pursuant to Articles 256 TFEU, 268 TFEU and 340 TFEU, to pay the applicants EUR 3 450 000 in respect of damages for the loss suffered on account of the tendering procedure in question;
 - order the PO, pursuant to Articles 256 TFEU, 268 TFEU and 340 TFEU, to pay the applicants EUR 345 000 in respect of damages for the loss of opportunity and harm caused to their reputation and credibility;
 - order the PO to pay legal and other costs and expenses incurred in connection with the present action.
- 23 The Commission contends that the Court should:
- dismiss the action as unfounded;
 - order the applicants to pay the costs.
- 24 In their reply, the applicants reduced the amount of their claim for damages for loss suffered on account of the tendering procedure in question and on account of the loss of opportunity and harm caused to their reputation and credibility to EUR 2 800 000 and EUR 280 000, respectively.
- 25 At the hearing, the applicant declared that it was withdrawing its third head of claim, formal note of which was taken in the minutes of the hearing.
- 26 Furthermore, the applicants stated at the hearing, in response to a question by the Court, that the reference to decisions ‘to award the respective contract[s] to the first and second cascade contractors’ should be understood as referring to decisions awarding the contracts in question to the other successful tenderers in so far as they relate to their ranking. In addition, they stated that the reference to all related decisions, in their second head of claim, related only to the decisions awarding the contracts at issue to the other successful tenderers in so far as they relate to their ranking.
- 27 Finally, at the hearing, in response to a question from the Court, the applicants claimed that the Commission, not the PO, should be ordered to pay the costs, note of which was taken in the minutes of the hearing.

Law

- 28 The applicants have brought an action for annulment and also a claim for damages.

I – The action for annulment

- 29 The Court finds, as a preliminary point, that it is apparent from the form of order sought by the applicants, as set out at the hearing, that it is appropriate to limit the scope of the present action for annulment to a review of the lawfulness of the ranking of the applicants' bids in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and second contractor in the cascade for lot 3, and of the decisions awarding the public contracts at issue to the other successful tenderers in so far as they relate to their ranking.
- 30 Moreover, given the close link between the decisions ranking the applicants' bid in the cascade for different lots and the decisions to award the contracts at issue to the other successful tenderers in so far as they relate to their ranking and inasmuch as the applicants' argument relates to the decisions ranking their bids, the Court considers it appropriate first of all to examine the lawfulness of the latter decisions.
- 31 In support of the action for annulment of the decisions ranking their bid in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place in the cascade for lot 3, the applicants rely on three pleas in law. The first plea alleges breach of the obligation to state reasons, due to the failure to disclose the relative merits of the bids submitted by the successful tenderers and non-compliance with the provisions of Article 100(2) of 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, 'the Financial Regulation'). The second plea in law alleges infringement of the tender specifications, due to the application of an award criterion contravening Article 97 of the Financial Regulation and Article 138 of Regulation No 2342/2002. The third plea in law alleges that manifest errors of assessment were made, that vague and unsubstantiated comments were made by the evaluation committee, that the award criteria set out in the call for tenders were amended a posteriori, that criteria were used that had not been notified to the tenderers in good time and that the selection and award criteria were conflated.
- 32 It should be noted that the three pleas are raised both in support of the action for annulment of the decisions ranking the applicants' bids in the third place in the cascade for lot 1 and in the third place in the cascade for lot 4, and in support of the action for annulment of the decision ranking the applicants' bid in the second place in the cascade for lot 3.
- 33 In that regard, it should be noted that, as mentioned by the applicants and the Commission, the PO has a broad discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender, and that review by the Court must be limited to checking that the rules governing the procedure and statement of reasons are complied with, the facts are correct and there is no serious or manifest error of assessment or misuse of powers (see, to that effect, judgment of 13 December 2011 in *Evropaïki Dynamiki v Commission*, T-377/07, EU:T:2011:731, paragraph 22 and the case-law cited).

A – The first plea in law, alleging breach of the obligation to state reasons due to the failure to disclose the relative merits of the bids submitted by the successful tenderers and non-compliance with the provisions of Article 100(2) of the Financial Regulation

- 34 The applicants allege that the PO provided inadequate justifications. It is alleged to have disclosed only limited information in its reply of 27 July 2011 and subsequently refused to reply to the applicants' detailed arguments set out in their letter of 5 August 2011, giving them the reasonable impression that their bids were wrongly 'rejected'. In that regard, the applicants recall that the Commission's usual practice when examining the comments of a

tenderer on the evaluation committee's assessment in a call for tenders is to have those comments examined by a different body in order to obtain an impartial result. The PO provided generic, vague, subjective and unfounded comments which did not substantiate the negative assessments of the applicants' bids. The evaluation committee also failed to provide any explanation in relation to the services that were additionally or better offered by the other successful tenderers for the relevant lots compared to what was offered in the applicants' bids.

35 The Commission disputes the merits of the applicants' arguments.

36 It must be recalled that, where, as in the present case, the institutions of the European Union have a broad discretion, respect for the rights guaranteed by the legal order of the European Union in administrative procedures is of even more fundamental importance. Those guarantees include, in particular, the duty of the competent institution to provide adequate reasons for its decisions. Only in this way can the European Union judiciary verify whether the factual and legal elements upon which the exercise of the discretion depends were present (see, to that effect, judgments of 21 November 1991 in *Technische Universität München*, C-269/90, ECR, EU:C:1991:438, paragraph 14, and 10 September 2008 *Evropaïki Dynamiki v Commission*, T-465/04, EU:T:2008:324, paragraph 54).

37 It should also be recalled that the obligation to state reasons is an essential procedural requirement that must be distinguished from the question whether the reasoning is well founded, which goes to the substantive legality of the measure at issue (judgments of 22 March 2001 in *France v Commission*, C-17/99, ECR, EU:C:2001:178, paragraph 35, and 12 November 2008 *Evropaïki Dynamiki v Commission*, T-406/06, EU:T:2008:484, paragraph 47).

38 It follows from Article 100(2) of the Financial Regulation, Article 149 of the implementing rules and from settled case-law that the contracting authority complies with its obligation to state reasons if, first, it merely informs any eliminated tenderer immediately of the reasons for rejection of his tender and then provides any tenderer who has made an admissible tender with the characteristics and relative advantages of the tender selected and the name of the successful tenderer, within 15 days of the date on which an express written request is received (see, to that effect, judgments of 9 September 2010 in *Evropaïki Dynamiki v EMCDDA*, T-63/06, EU:T:2010:368, paragraph 111 and the case-law cited, and 12 December 2012 *Evropaïki Dynamiki v EFSA*, T-457/07, EU:T:2012:671, paragraph 45).

39 Such a manner of proceeding satisfies the purpose of the obligation to state reasons laid down in the second paragraph of Article 296 TFEU, according to which the reasoning followed by the authority which adopted the measure in question must be disclosed in a clear and unequivocal fashion so as, on the one hand, to make the persons concerned aware of the reasons for the measure and thereby enable them to defend their rights, and, on the other, to enable the Court to exercise its review (see judgments in *Evropaïki Dynamiki v EMCDDA*, cited in paragraph 38 above, EU:T:2010:368, paragraph 112 and the case-law cited, and *Evropaïki Dynamiki v EFSA*, cited in paragraph 38 above, EU:T:2012:671, paragraph 46 and the case-law cited).

40 It does not follow either from the first subparagraph of Article 100(2) of the Financial Regulation, from the third subparagraph of Article 149(3) of the implementing rules or from the case-law that, on written request by an unsuccessful tenderer, the contracting authority is bound to supply it with full copies of the evaluation report and the successful tenders (order of 13 January 2012 in *Evropaïki Dynamiki v EEA*, C-462/10 P,

EU:C:2012:14, paragraph 39).

- 41 It must also be recalled that the requirements to be satisfied by the statement of reasons depend on the circumstances of each case, in particular the content of the measure in question, the nature of the reasons given and the interest which the addressees of the measure, or other parties to whom it is of direct and individual concern, may have in obtaining explanations (see judgments of 2 April 1998 in *Commission v Sytraval and Brink's France*, C-367/95 P, ECR, EU:C:1998:154, paragraph 63 and the case-law cited, and *Evropaiki Dynamiki v Commission*, cited in paragraph 36 above, EU:T:2008:324, paragraph 49).
- 42 Accordingly, in order to determine whether, in the present case, the PO has satisfied the requirement to state reasons, it is necessary to examine the letter of 22 July 2011, containing the decisions ranking the applicants' bids in the cascade for each of the relevant lots. It is also appropriate to examine the letter of 27 July 2011, sent to the applicants within the period prescribed by Article 149(3) of the implementing rules, in response to their express request of 22 July 2011 seeking the disclosure of further information on the decisions awarding the contracts at issue concerning the successful tenderers and the ranking of their bids in the cascade for each of the lots.
- 43 By letter of 22 July 2011, the PO informed the applicants that their bids had been ranked in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place in the cascade for lot 3. It also set out, in relation to those lots, the technical scores given to each of the successful tenderers' bids, their price and their final overall score. Finally, it informed the applicants of their right to obtain additional information on the grounds for the ranking of those bids.
- 44 As stated in paragraph 15 above, following a request for clarification made by the applicants, the PO, by letter of 27 July 2011, informed the applicants, in relation to lots 1, 3 and 4, of the names of the subcontractors which were part of the consortia of the other successful tenderers and the percentages of the relevant market that had been assigned to them. In that regard, it should be noted that Logica (tenderer) and Herakles (subcontractor) were mentioned for lot 4, and not for lot 3, as indicated, on the basis of what can only be a typing error, which moreover was not raised by the applicants.
- 45 In the same letter, the PO sent the applicants extracts of the evaluation reports including, for each of the relevant lots, information about their bids as well as about those of the other successful tenderers. Those extracts, amounting to 35 pages in total, contained tables including comments, for each technical award criterion, concerning the strengths and weaknesses of the applicants' bids and those of the other successful tenderers and the scores awarded in respect of each criterion. Some of the comments were redacted, in part or in full, the PO having told the applicants that some information — whose disclosure would be contrary to the public interest, could affect the legitimate commercial interests of the other successful tenderers (for example, information relating to the technical solution proposed) or could distort fair competition between the undertakings concerned — could not be disclosed to them and had been removed.
- 46 Finally, in the same letter, the PO informed the applicants that the names of the members of the evaluation committee could not be disclosed.
- 47 It should be observed that, for each of the relevant lots, the PO supplied the applicants with the names of the other successful tenderers, the evaluation committee's comments, both in respect of the applicants' bids and of those ranked higher than theirs, and also the outcome of the financial evaluation, thus enabling the applicants to know the characteristics and

relative advantages of the other successful tenders, as required by Article 100(2) of the Financial Regulation. The technical comments enabled the applicants to compare, for those lots, the scores awarded to their bids, in respect of each technical award criterion, and those awarded to the bids ranked higher than theirs.

48 In that respect, although the applicants submit that the Commission must disclose the information concerning the other successful tenderers' bids that could be considered to be confidential and state how those tenderers could be harmed by that disclosure, they merely make a general request, without indicating, in the part of the pleadings relating to that plea in law, the comments or the parts of the bids to which they refer, whose disclosure is allegedly necessary for effective legal and judicial protection.

49 It should be recalled that, under Article 100(2) of the Financial Regulation, the contracting authority is entitled not to disclose certain details where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

50 In addition, it is apparent from the case-law that, in the context of an action brought against a decision taken by a contracting authority in relation to a contract award procedure, the adversarial principle does not mean that the parties are entitled to unlimited and absolute access to all of the information relating to the award procedure concerned. On the contrary, that right of access must be balanced against the right of other economic operators to the protection of their confidential information and their business secrets. The principle of the protection of confidential information and of business secrets must be observed in such a way as to reconcile it with the requirements of effective legal protection and the rights of defence of the parties to the dispute and, in the case of judicial review, in such a way as to ensure that the proceedings as a whole accord with the right to a fair trial (see, to that effect, judgment of 23 November 2011 in *bpost v Commission*, T-514/09, EU:T:2011:689, paragraph 25 and the case-law cited). It is apparent from the applicants' detailed observations set out in their letter of 5 August 2011 that they had sufficient knowledge of the relative advantages of the other successful tenderers' bids.

51 Moreover, it should be recalled that the decision to classify the applicants' bids in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place in the cascade for lot 3, was taken after the final evaluation, that is to say, after the calculation of the price-quality ratios of each bid for each of the lots. Accordingly, the relative advantages of the bids placed higher than that of the applicants, by comparison with the applicants' bid, did not concern solely the scores obtained in relation to the technical award criteria, but also related to the price quoted and, in particular, the price-quality ratio of the bids.

52 In those circumstances, the PO, by providing the applicants, for each of the relevant lots, with the comments relating to the technical evaluation, in respect of each award criterion, for the bids placed higher than theirs as well as the price proposed in each of those bids and the details of the price-quality ratio calculations, adequately set out the relative advantages of the bids of the other successful tenderers, including where those bids contained a price higher than the applicants' bids for the lot concerned.

53 Contrary to what the applicants seem to think, in the context of the notification of the characteristics and relative merits of the successful tender for each relevant lot, the contracting authority cannot be required to undertake a detailed comparative analysis of the successful tender and of the unsuccessful tenderer (order of 13 October 2011 in *Evropaiki Dynamiki v Commission*, C-560/10 P, EU:C:2011:657, paragraph 17, and judgment in

Evropaiki Dynamiki v EFSA, cited in paragraph 38 above, EU:T:2012:671, paragraph 51), which is also true, as in the present case, for a tenderer whose bids, such as those of the applicants, were ranked lower than the bids of the other successful tenderers.

- 54 Moreover, in the present case, contrary to what the applicants allege, the PO is not under an enhanced obligation to state reasons where there are alleged to have been errors during the tendering procedure which led the evaluation committee to adopt a corrected award decision. First, it must be noted that the error which led to the adoption of a corrected award decision did not affect lots 3 and 4 (see paragraph 12 above). Second, with respect to lot 1, to which that error relates, the Commission indicated that there was a calculation error in the formula used to evaluate the tender offering the best price-quality ratio (see paragraph 12 above). At the hearing, in response to a question from the Court, the Commission stated that the scores had in no way been altered, which is confirmed by the document entitled ‘Corrigendum to Report of works of the Evaluation Committee evaluating offers submitted in response to the call for tenders No 10340 lot 1’ which was added to the file (see paragraph 21 above). Therefore, that error did not affect the scoring of the bids during the evaluation in the light of the technical award criteria.
- 55 Finally, the applicants’ argument, alleging failure to conduct a review of their detailed observations by a body other than the evaluation committee, despite their importance, in order to reach a fair solution, must be rejected. It is not apparent from the applicable regulation that the contracting authority was required to conduct such a review, nor do the applicants rely on any provision to that effect. In any event, that argument is ineffective since it does not demonstrate that the letter of 22 July 2011, containing the decisions ranking the applicants’ bids in the cascade for each of the relevant lots, is inadequately reasoned; that complaint cannot lead to the annulment of that letter and those decisions.
- 56 In the light of the above, it must be held that the PO, in its letters of 22 and 27 July 2011 and in the extracts of the evaluation reports, annexed to the letter of 27 July 2011, provided a sufficiently detailed statement of the reasons why the bids submitted by the applicants were placed in third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place for lot 3, and it is not necessary, contrary to what the applicants allege, to invite the Commission to submit a table showing, for lots 1, 3 and 4 and for each successful tenderer, the impact of each comment, negative or positive, on the scoring of the bids, in respect of each of the technical award criteria. In that regard, it must be stated that the contracting authority cannot be required to communicate to a tenderer who was unsuccessful in securing the first place in the cascade, in addition to the reasons for the ranking of its tender, a detailed summary of how each detail of its tender was taken into account when the tender was evaluated (see, by analogy, judgment of 4 October 2012 in *Evropaiki Dynamiki v Commission*, C-629/11 P, EU:C:2012:617, paragraph 21 and the case-law cited).
- 57 Furthermore, to the extent that the applicants are asking the Court to order the production of all the evaluation reports of the applicants’ bids and of the bids of the other successful tenderers, it should be recalled that an unsuccessful tenderer is not entitled to request the disclosure of the assessment reports in full (see paragraph 40 above), which also holds true, as in the present case, for a tenderer whose bid, such as that of the applicants, was ranked lower in the cascade for a specific lot than that of the bids of the other successful tenderers in the same cascade. Moreover, such disclosure does not appear necessary in this case.
- 58 Accordingly, there is no need to grant the applicants’ request that the Court order the production of the table referred to by the applicants, mentioned in paragraph 56 above, nor of all the evaluation reports.

- 59 It must be concluded that the PO provided sufficient grounds for its decisions ranking the applicants' bids in the cascade for each of the relevant lots and met the requirements prescribed in Article 100(2) of the Financial Regulation and Article 149 of the implementing rules.
- 60 That conclusion is not invalidated by the applicants' claims concerning the inadequacy of some of the evaluation committee's comments relating to the assessment of their bids for lots 1, 3 and 4.
- 61 To the extent that the applicants seek, by their argument on the evaluation of their bids in the light of criteria 1.1, 1.3 and 3.1, to dispute the merits of the evaluation committee's assessment, that argument must be necessarily rejected in the context of that plea, alleging breach of the obligation to state reasons.
- 62 Furthermore, having regard to the case-law cited in paragraph 39 above, the applicants may not rely on a breach of the obligation to state reasons. First, although the applicants cite some of the evaluation committee's comments, made as part of the evaluation of their bids in the light of criteria 1.5, 3.2, 3.5 and 4.2, it is sufficient to note that they do not cite those comments in their entirety, as they are set out in the extracts of the evaluation reports which the applicants were provided with. It must be stated that those comments are sufficiently accurate to be understood and challenged and to allow for a review of the evaluation committee's assessment, such as those mentioned, moreover, by the applicants and expressed during the evaluation of their bids in the light of criteria 1.2, 1.4, 3.3, 3.4 and 3.5. Finally, inasmuch as the applicants put forward arguments in order to challenge the merits of some of the comments they refer to, in the part of their pleadings relating to their second plea and in that relating to the third plea, concerning the assessment of their bids, in the light of criteria 1.1, 1.2, 1.4, 1.5, 3.2, 3.4, 3.5 and 4.2, or concerning the assessment of another bid, in respect of which the same comment was made, in the light of criteria 1.3 and 3.3, they may not rely on a breach of the obligation to state reasons. Those arguments demonstrate, moreover, that the applicants were able to understand, in that regard, the PO's reasoning.
- 63 Secondly, the PO was not required, contrary to what the applicants submit, to state what was better in the other successful tenderers' bids or to outline the reasons therefor. The applicants' arguments relating to the evaluation committee's comments in the context of the evaluation of their bids and of those of the other successful tenderers, in the light of criteria 3.1, 3.2 and 4.2, amount to a request for a thorough comparative analysis of the bids and should therefore be rejected (see paragraph 53 above). With respect to the applicants' argument claiming, with respect to the evaluation of the bids in the light of criterion 4.2, that no comments were made in the evaluation report on the delivery management approach proposed by Sword-Siveco, it is sufficient to note that that tenderer was not selected in the cascade for lot 4.
- 64 In the light of all the foregoing considerations, the present plea must be dismissed.

B – The second plea, alleging a breach of the tender specifications as a result of the application of an award criterion infringing Article 97 of the Financial Regulation and Article 138 of the implementing rules

- 65 The applicants claim that, for lots 1, 3 and 4, the evaluation committee wrongly interpreted, respectively, criteria 1.1, 3.1 and 4.1, which related to the 'overall quality of the presentation of the tenderer's response' and which, accordingly, were not aimed at identifying the most economically advantageous tender, in breach of Article 97 of the Financial Regulation and Article 138 of the implementing rules. They take the view that the

reference to the presentation of the bids did not relate to issues of style, layout and colours, but rather to the quality of the content of the presentation, for instance, its clarity, structure, coherence and the completeness of the areas covered.

- 66 According to the applicants, the flaw in the interpretation of criteria 1.1, 3.1 and 4.1 must be assessed in the context in which they are applied, which, in the present case, relates to ‘software development and maintenance’ for lots 1 and 3 and ‘consultancy and assistance services regarding management of information technology projects’ for lot 4. In that context, it is the methodologies and work practices of the tenderers that should, with respect to all lots, have been taken into account, and not, as asserted by the Commission, an abstract concept of ‘form and style’, which was not even defined in the tender specifications. Furthermore, the ‘documentation’ was a ‘by-product’ of the requested services, which was technical in nature and destined for use by technical personnel and not by the public.
- 67 The Commission disputes the correctness of the applicants’ arguments.
- 68 It should be recalled that Article 97 of the Financial Regulation provides that contracts are to be awarded on the basis of award criteria applicable to the content of the tender, after the capability of economic operators not excluded has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders, and that the contract is to be awarded to the tender offering the best value for money.
- 69 It must also be borne in mind that, in accordance with Article 138 of the implementing rules, the tender offering the best value for money is that which has the best price-quality ratio, taking into account criteria justified by the subject of the contract, such as the price quoted, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability, completion or delivery times, after-sales service and technical assistance. That article also provides that the contracting authority is to specify, in the contract notice or in the tender specifications, the relative weighting which it gives to each of the criteria chosen to determine the most economically advantageous offer.
- 70 Article 97 of the Financial Regulation and Article 138 of the implementing rules are intended to ensure compliance with the principles of equal treatment and transparency, enshrined in Article 89 of the Financial Regulation, at all stages of the procedure for the award of public contracts, in particular the stage of selection of tenders for the award of the contract (see, to that effect, judgment of 15 October 2013 in *Evropaiki Dynamiki v Commission*, T-457/10, EU:T:2013:527, paragraph 110 and the case-law cited).
- 71 The purpose of Article 97 of the Financial Regulation and of Article 138 of the implementing rules is simply to allow all reasonably well informed and normally diligent tenderers to interpret the award criteria in the same way and, consequently, to have equal opportunity in formulating the terms of their tenders (see, to that effect, judgment in *Evropaiki Dynamiki v Commission*, cited in paragraph 70 above, EU:T:2013:527, paragraph 111 and the case-law cited).
- 72 In the present case, it should be recalled that criteria 1.1, 3.1 and 4.1 were entitled ‘Overall quality of the presentation of the tenderer’s response’ (see paragraphs 6 and 7 above).
- 73 It is apparent from the assessment of the applicants’ bid, with respect to criterion 1.1, that the evaluation committee made four negative comments. The two comments cited by the applicants state that the ‘layout [was] not always reader friendly (e.g. spacing not used, ..., title in one page, content in the next)’ and that ‘characters limit per page [was] not respected’.

- 74 With respect to criterion 3.1, the evaluation committee made five negative comments relating to the applicants' bid. The three comments referred to by the applicants indicate that the 'layout was not always reader friendly (e.g. spacing not used)', that there were 'broken internal references' and that 'spacing between the words [was] not used'.
- 75 With respect to criterion 4.1, the evaluation committee made three negative comments concerning the applicants' bid, which, in substance they cite, and according to which 'layout [was] not always user friendly', there were 'various typos' and 'the end of page 5 [did] not correspond to the beginning of page 6'.
- 76 As the Commission has done, and contrary to what the applicants submit, it should be noted that the provisions of the tender specifications, and more specifically, the first two subparagraphs of Section 2.2 of the specifications, entitled 'Form and content of the tender', did not make it possible to ignore, for the purposes of the evaluation of tenders in the light of the technical award criteria, aspects of form and style, in particular in the context of criteria 1.1, 3.1 and 4.1. Those subparagraphs state:
- 'Tenders must be clear, concise and assembled in a coherent manner (e.g., bound or stapled, etc.). The tenderer [was] also asked to provide a completed list indicating where to find the required documents (Annex 5). If the tender was divided into several files, it [was] advised to make a table of contents in each file.
- Since tenderers [would] be judged on the content of their written bids, these [were to] make it clear that they [were] able to meet the requirements of the specifications.'
- 77 Moreover, as noted by the Commission, Section 2.7.1 of the tender specifications was more of a description of the requirements for the layout and formatting of bids, as well as the limits in terms of pages and characters. That section also drew the tenderers' attention to the fact that any bid exceeding those limits would not be considered in its entirety; only the maximum number of pages indicated for each requested document would be considered.
- 78 Thus, in the provisions of the tender specifications, aside from the purely formal conditions relating to the compilation of the tender documents, the PO expressly drew the attention of potential tenderers to the importance of a clear and concise presentation of their tenders in order to allow it to assess, in optimum conditions, the content of those tenders and their capacity to satisfy the requirements of the tender specifications. It is undeniable that the formal and stylistic presentation of a tender necessarily has an impact, either positive or negative, on the level of comprehension, and thus the evaluation of that tender by the body having the task of examining it (judgment in *bpost v Commission*, cited in paragraph 47 above, EU:T:2011:689, paragraph 55; see also, to that effect, order of 20 September 2011 in *Evropaïki Dynamiki v Commission*, C-561/10 P, EU:C:2011:598, paragraphs 34 and 35).
- 79 It may also be noted that Section 4 of the tender specifications stated that services related to the provision of IT services could be requested such as, for lots 1 and 3, 'documentation drafting' and for lot 4, 'studies and proof of concept' and the 'elaboration of documentation'. As correctly noted by the Commission, the quality of the drafting of a tender could be a pertinent indicator in the context of a contract which includes the completion of such tasks.
- 80 Finally, as noted by the applicants, criteria 1.1, 3.1 and 4.1 thus interpreted were applied to the bids of the tenderers ranked first in the cascades for lots 1, 3 and 4, inasmuch as some comments were also made on the form and style of those bids.

81 Consequently, the applicants incorrectly claim that the PO misinterpreted criteria 1.1, 3.1 and 4.1 by examining the formal and stylistic presentation of their tenders.

82 In the light of all of the foregoing considerations, the second plea must be rejected.

C – The third plea, alleging manifest errors of assessment, vague and unsubstantiated comments by the evaluation committee, subsequent amendments of the award criteria indicated in the call for tenders, criteria which were not announced in good time to tenderers and the conflation of the selection and award criteria

1. The scope of the review by the Court

83 The Commission submits that the applicants' approach assumes that the Court may, in the light of the applicants' technical claims, re-assess their bids and the other successful bids. In its view, the Court should only seek to assess whether the evaluation committee has engaged in a serious misuse of its powers or manifestly exceeded its discretion in the evaluation of the bids.

84 In the reply, the applicants, claiming to have demonstrated the existence of a multitude of manifest errors of assessment vitiating the evaluation committee's assessment, reject the Commission's argument that they are asking the Court 'to "replace" the [Evaluation Committee's] members' complex technical assessment'. They further submit having provided a reasonable assessment of what would have been a legitimate score had the evaluation committee applied the same rules and lines of reasoning in awarding scores to each criterion, having regard to the seriousness of the flaws and omissions identified in each bid.

85 It should be recalled that according to the case-law referred to in paragraph 33 above, the PO enjoys a broad margin of discretion with regard to the factors to be taken into account for the purpose of deciding to award a contract following an invitation to tender, and that review by the Court must be limited to checking compliance with the procedural rules and the duty to give reasons, the correctness of the facts found and the lack of a manifest error of assessment or misuse of powers. Accordingly, it is not for the Court to conduct a new evaluation of the successful tenderers' bids, or to carry out a new scoring of those bids in the light of the technical award criteria. Consequently, the applicants' arguments relating to the award of different scores to their bids and to those of the other successful tenderers must be rejected.

86 The applicants' complaints relating to the evaluation committee's comments when evaluating their tenders and those of the other successful tenderers must be examined on the basis of those considerations.

2. The alleged errors of the evaluation committee

a) Lot 1

Criterion 1.1 entitled 'Overall quality of the presentation of the tenderer's response'

87 According to the applicants, in the first place, the evaluation committee misinterpreted the essence of criterion 1.1, which clearly concerned the quality of the content and the substance of the tender and not its 'cosmetics'. The evaluation committee, by its interpretation, thus infringed the tender specifications by altering the criterion. The approach adopted by the committee was vitiated, from the beginning, by a manifest error of assessment relating to the purpose of that criterion and the relative value of their tender. In

that regard, it is sufficient to note that the applicants' argument is identical to that raised, in respect of that criterion, in the second plea and which has been rejected (see paragraph 81 above).

88 In the second place, the applicants challenge the scores awarded to their bid as well as those awarded to the bids of Logica and Sword-Siveco. It should be recalled, however, that, as indicated in paragraphs 33 and 85 above, it is not for the Court to conduct a new evaluation of the bids; the Court's review must be restricted to checking that the rules governing procedure and the statement of reasons have been complied with, that the facts are materially accurate, and that there has been no serious or manifest error of assessment.

89 First, in that context, while the evaluation committee certainly made a negative comment with respect to Logica's bid, cited by the applicants and relating to the use of the old 'OPOCE' acronym, it should be noted that it was the only negative comment relating to that bid. As the Commission submits, that comment may be considered as relating to a detail in relation to the overall quality of the presentation of the tenderer's response, with the applicants not disputing, moreover, that it did not penalise Logica's tender.

90 Second, the applicants take the view that their bid and that of Sword-Siveco should have been given the same score. They argue that, in addition to the comments on the use of the old 'OPOCE' acronym, which does not appear to have penalised Sword-Siveco's bid, that bid was the subject of two negative comments, identical to those issued with respect to their bid.

91 It must be noted that the applicants' bid was the subject of two additional negative comments, one relating to spelling errors and the other to non-compliance with the maximum number of characters per page. Consequently, that bid and that of Sword-Siveco were not the subject of identical comments leading to different scores and, contrary to what the applicants claim, they may not validly plead infringement of the principle of equal treatment in that regard.

92 Moreover, it should be recalled that Section 2.7.1 of the tender specifications described the requirements for the layout and formatting of bids, as well as the limits in terms of pages and characters, and drew the tenderers' attention to the importance of complying with those requirements (see paragraph 77 above). Accordingly, the negative comment regarding non-compliance with the maximum number of characters per page in the applicants' bid did not relate to a mere detail. In addition, the applicants' argument that the evaluation committee's comment is incorrect and that a simple calculation would show the opposite must be dismissed, since they provide no evidence in support thereof.

93 Finally, as regards the allegation by the applicants that, with respect to Sword-Siveco's bid, the evaluation committee did not take account of the three negative comments, it should be noted that they were made in the context of the evaluation of that bid in the light of other criteria, namely criteria 1.4 and 1.5, and that they had to be taken into consideration in that context. Contrary to what the applicants seem to claim, it is not apparent from the judgment in *bpost v Commission*, cited in paragraph 50 above (EU:T:2011:689, paragraph 97), that a deficiency identified in the tender that affects its assessment on the basis of various criteria should necessarily be considered in relation to each criterion. In any event, it is apparent from the comments concerning Sword-Siveco's bid that at issue each time was a specific error, not repeated errors in the document. Accordingly, the evaluation committee was able to consider, without making a serious and manifest error, that those errors did not have to be taken into account in the assessment in the light of criterion 1.1, relating to the general quality of the presentation of the bids.

94 Consequently, the applicants' argument relating to the assessment of the bids in the light of criterion 1.1 must be rejected.

Criterion 1.2 entitled 'Tenderer's approach to the quality assurance and to project management to be used during the execution of the contract'

– The applicants' bid

95 The applicants argue, first, that their bid perfectly complied with the requirements set out in page 19 of the tender specifications. Apart from those specifications, the PO did not set out any requirements or rules relating to the aspects to be analysed and presented in the bid with respect to the delivery management approach.

96 First of all, inasmuch as the applicants seem to allege inadequate reasoning by arguing the absence of any precise indication describing the exact shortcomings of their bid, such a complaint must be dismissed. The evaluation report stated that their proposal was, in that regard, 'general, without details' and that the bid mentioned only that '[t]he tenderer [should] comply with the Office's requirements as stated in the Specifications'.

97 Next, it should be noted that the applicants merely refer to Section 2.5 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management' and state that their bid perfectly fulfilled the requirements of the tender specifications and supplied, as was required by those specifications, a detailed description of the proposed approach for delivery management. Since the applicants do not set out the specific reasons on the basis of which they claim that the evaluation committee made an error of assessment in that regard, that complaint must be dismissed. In any event, it should be noted that that section contained no description of the proposed solutions. As noted by the Commission, it contained a simple definition of the delivery management approach, without detailed information, for example, as to how the applicants would actually conduct that management or as to the procedures ensuring the quality of deliverable items.

98 Furthermore, as observed by the Commission, it must be held that the simple statement that 'the tenderer [should] comply with the [PO]'s requirements as stated in the specifications', was not sufficient to obtain more points. Section 2.7.2 of the tender specifications indicated that 'tenders should elaborate on all points addressed by these specifications in order to score as many points as possible', stating that 'the mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, [would] only result in a very low score'.

99 The evaluation committee was therefore entitled to consider, without making a serious and manifest error, that the proposal in that regard was 'general, without details', such that the applicants' complaint must be dismissed.

100 In the second place, according to the applicants, the evaluation committee had no basis for stating that their proposal relating to documentation management did not provide any information on the linguistic and editorial quality of the documentation. They argue that their proposal presented the approach they would apply in order to ensure the production of 'quality-assured' versions of documents to be delivered. They rely, in that regard, on Sections 1.6 and 2.6 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management'.

101 The applicants' complaint must be dismissed because their arguments do not call into question the evaluation committee's assessment.

- 102 It should be noted that according to the applicants, in Section 1.6 of the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’, it was stated that ‘all deliverables [would] pass quality review’ and that section presented the approach used to ensure the quality of the deliverables. However, it must be stated that the applicants do not submit that reference was made to the linguistic and editorial quality of the documentation.
- 103 Furthermore, the applicants claim that Section 2.6 of the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’ described, in particular, their proposal on the preparation of documentation, which included the production and quality control of the ‘initial and final versions of document deliverables’, in order to ensure that ‘quality-assured document versions [would] be submitted to the client as draft version for review’, ‘final versions [being] produced by taking into account feedback received from the Client’. However, they fail to indicate where the linguistic and editorial quality of the documentation was specifically mentioned in that section; it must be noted that there is no such reference there.
- 104 In the third place, the applicants submit that the evaluation committee’s contention that certain tools, such as the open source office suite ‘OpenOffice’, were redundant in view of the technical environment of the PO is incorrect.
- 105 First, the applicants submit that the tender specifications did not prohibit additional tools being offered in order to enable optimal performance of the contract. They maintain that they therefore analysed the requirements of the contract set out in the tender specifications and proposed appropriate complementary tools in order to ensure the quality and management of the project during the performance of the contract. Second, they argue that the implementation, testing and deployment plans were specific applications and, accordingly, that the commercial tools, or that the open source software alternatives thereto, and the versions of the tools to be used would depend on the requirements of each application. They state that they proposed a variety of tools in order to deal with any possible requirement of the PO and its applications, which would have given the PO a high degree of flexibility, without ever proposing or suggesting the use of tools incompatible with those of the PO. In the case of the open source office suite ‘OpenOffice’, their bid clearly had the advantage, in addition and in the event that the PO chose to resort to it, of not requiring additional remuneration in order to comply with that request. Instead of noting the bid’s advantages, the Commission penalised it as a result thereof.
- 106 In that regard, it should be noted, as the Commission has done, that the tenderers were informed of the existing technical environment. As mentioned by the tender specifications, the standard workstation configuration at the PO included only the proprietary office suite ‘MS Office’, and not the open source office suite ‘OpenOffice’, proposed by the applicants. The applicants were not, moreover, unaware that the PO had not chosen to use that open source office suite, since they refer to the possibility that the PO might choose to use it. Moreover, as noted by the Commission, they do not dispute, that there are incompatibilities between that free office suite and the proprietary office suite. Consequently, as noted by the Commission, it was legitimate to expect the tenderers to propose tools which were compatible with the existing environment of the PO, while being tailored to the projects. Accordingly, the evaluation committee may not be criticised for having considered that a tool such as the open source office suite in question was redundant.
- 107 In the fourth place, regarding the proposed approach for version handling, the applicants claim that the evaluation committee had no basis for claiming that they had indicated using the ‘Subversion’ software and mentioned, in Section 5.2 of the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’, using the ‘Rational

ClearCase' system. They refer to Sections 5.2 and 5.5 of that part. They argue that that system was scheduled to be used for the management of each individual deployment, throughout the implementation life cycle of each application, whereas the software was to be used for the management of the source code and for handling versions as part of the approach, which they put forward, for the configuration management.

108 The evaluation committee's negative comment, challenged by the applicants, states the following: '- approach to version handling: Subversion [was] said to be used, whereas in point 5.2 reference to Rational ClearCase [was] made'.

109 It must be stated that the applicants do not dispute that, as pointed out by the Commission, the 'Rational ClearCase' system and the 'Subversion' software are two configuration management tools which serve the same purpose. In Section 5.5 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management', more specifically dedicated to the management of the source code and the versions, reference was admittedly made to that software. However, in Section 5.2 of that part, the applicants made a list of tools used in the software development process, in which that system is included, but not that software.

110 The applicants do not dispute the Commission's statement that the 'Rational ClearCase' system was not compatible with the technical environment of the PO, as described in Annex 12 to the tender specifications. Although the applicants rely on the additional expertise and flexibility they proposed, it must be stated that those proposals, set out in their bid, could raise doubts about the consistency of that bid and, accordingly, the assessment of the evaluation committee is not vitiated by a serious and manifest error of assessment in that regard.

111 In the fifth place, in the reply, the applicants dispute two of the evaluation committee's comments on their bid: that relating to numerous references to previous projects and that according to which, for the 'phases description — in point 5.2, reference to six core groups [was] made, nevertheless only five [were] described'. In response to the plea of inadmissibility raised by the Commission, they maintain that those complaints are admissible.

112 With respect to the first comment, the applicants claim that it is specifically addressed in paragraph 26 of the application. They argue that the evaluation committee did not explain how it was wrong to refer to previous successful projects in order to support the fact that the proposed quality assurance and project management procedures had been resorted to successfully or how that aspect could affect the assessment. It must be held, without it being necessary to rule on its admissibility, that that complaint is unfounded. The applicants do not deny having made many references to previous projects. As pointed out by the Commission, such references are not relevant in the award phase, during which the tenderers must analyse the specific requirements relating to the services required in respect of the call for tenders to which their bid is a response.

113 With respect to the second comment, the applicants claim that it is clear from their bid that six core groups were presented, not five. In the descriptive part, the analysis and design phases were presented together because of the restriction on the number of pages and of the Commission's official guidelines to that effect.

114 It must be stated that the applicants did not challenge in the application the second comment at issue and that that challenge is not founded on any evidence disclosed during the procedure. Accordingly, as noted by the Commission, their complaint with respect to that comment should be considered out of time and therefore inadmissible.

115 That complaint is, in any event, unfounded. In Section 5.2 of the part of the applicants' bid entitled 'Tenderer's approach to quality assurance and to project management', reference was made to six phases, but only five were then distinguished, as noted, correctly, by the evaluation committee. The applicants' argument relating to the number of pages must be rejected inasmuch as it would have been sufficient to announce five phases or to specify that two phases were grouped together. Furthermore, assuming that the document entitled 'Rational Unified Process', which they rely on, is relevant in the present case, the reference to it does not support their argument. The document cites six main phases and, although the analysis and design are grouped together, as in the bid, a sixth workflow phase relating to testing is provided for. However, that phase is not clearly apparent in the applicants' bid. Therefore the six phases announced in the bid and the six phases of the rational unified process do not correspond. Accordingly, the evaluation committee may not be criticised for having committed a serious and manifest error of assessment in that regard.

– Sword-Siveco's bid

116 The applicants submit that the evaluation committee made a manifest error in its assessment of the Sword-Siveco bid. That consortium was considerably favoured, given that it failed to provide a complete proposal and disregarded the requirements of the tender specifications, which should have resulted in marks below the requisite threshold. According to the evaluation committee, that bid failed to describe in detail the software development and maintenance phases and failed to provide a 'well-detailed' description of the testing methods and steps for the software.

117 It should be noted that the applicants did not indicate on what basis Sword-Siveco's bid should have received a score below the requisite threshold. Moreover, as correctly pointed out by the Commission, that bid was awarded only 30 points out of 40, fewer points than the applicants were awarded, reflecting the fact that it did not contain sufficient details on several aspects.

118 Furthermore, the applicants allege breach of the principle of transparency and non-discrimination, on the ground that their bid was penalised because of an allegedly excessive number of characters per page, whereas the contract was awarded to a tenderer who did not meet the obligations imposed by the tender specifications. That complaint must be rejected, as the applicants have failed to indicate how the principles of transparency and non-discrimination were infringed. In any event, if indeed they wish to plead breach of the principle of equal treatment and the fact that they were treated differently from Sword-Siveco, that complaint must be dismissed. No comment regarding an excessive number of characters per page is included in the evaluation of that tender under criterion 1.2. Accordingly, inasmuch as the comments referred to by the applicants do not relate to the assessment of that bid in the light of criterion 1.2, they may not rely on them to plead an infringement of the principle of equal treatment.

119 Consequently, the applicants' argument concerning the alleged errors of the evaluation committee with respect to Sword-Siveco's bid must be rejected.

120 In view of all the foregoing, the applicants' complaints relating to the evaluation of the bids in the light of criterion 1.2 must be rejected.

Criterion 1.3 entitled 'Technical merits of the human resources for the execution of the tasks'

– The applicants' bid

- 121 In the first place, according to the applicants, the evaluation committee penalised their bid as a result of having incorrectly held that the proposed experts were not bilingual in English and French. The tender specifications required tenderers to provide a project team which covered both languages, which is exactly what the applicants offered. The evaluation committee introduced a posteriori a new criterion relating to the degree of coverage of the working languages going beyond mere ‘coverage’, as set out in Answer No 9 of Additional Information No 5 of the PO. Moreover, according to the applicants, the evaluation committee was wrong to evaluate the capacity of the individual experts of the team and their CVs during the award phase, since they had already been evaluated in the selection phase. Accordingly, a serious and manifest error was made and the judgment of 24 January 2008 in *Lianakis and Others* (C-532/06, ECR, EU:C:2008:40) was ‘infringed’.
- 122 That argument does not hold.
- 123 It should first be noted that the evaluation committee’s comment that the ‘proposed human resources in the applicants’ bid were not bilingual [in English and French]’ is not incorrect. Contrary to what the applicants claim and as pointed out by the Commission, among the project managers and technical consultants presented in their bid, only three out of four had a strong command of English and French. With respect to the analyst-programmers and the end-user support team, only one in six analyst-programmers and one in three persons supporting the end-user of information systems had a strong command of English and French, and one analyst-programmer and one person supporting the end-user of information systems had a basic knowledge of French.
- 124 Next, it should be noted that the applicants correctly point out that, according to Answer No 9 of Additional Information No 5 of the PO, the tenderers were informed that the proposed human resources should have ‘knowledge of at least one of the working languages’. However, it was also mentioned that tenderers were requested to ‘note that the coverage of the working languages by the proposed human resources [would] be taken into account by the evaluation of the offers for criterion [1.]3’.
- 125 Therefore, while it is true that it was not required that the proposed human resources be bilingual in English and French, it is also evident, contrary to what the applicants claim, that in the evaluation of the bids in the light of criterion 1.3, the assessment of the knowledge of languages of the proposed persons and the coverage offered necessarily included consideration of the language proficiency stated in the bid and that this is not a criterion added by the evaluation committee.
- 126 Finally, it is necessary to reject the argument by which the applicants complain that the PO, in having assessed the CVs of the proposed team members in both phases, conflated the selection and award phases.
- 127 First, it is not at all apparent from the tender specifications that the CVs of the members of the proposed team had to be evaluated during the selection phase, since they were not among the documents required for that purpose.
- 128 Second, as regards the argument based on the judgment in *Lianakis and Others*, cited in paragraph 121 above (EU:C:2008:40), it must be stated that, in that regard, the applicants merely mention that judgment, without stating how it would apply to the present case and without establishing the extent to which the evaluation committee misapplied it. That argument must therefore be rejected.
- 129 In any event, to the extent that the applicants seek to challenge the taking account, in the present case, of the CVs of the members of the team proposed during the award phase, that

argument must be rejected.

- 130 In that regard, it is apparent from the case-law that a distinction must be drawn between selection criteria and award criteria. The examination of the tenderers' capacity to perform the contract and the award of the contract are two distinct procedures and are governed by different rules. The tenderers' capacity to perform the contract is to be verified by the authority awarding the contract in accordance with the selection criteria, that is to say, the criteria of economic, financial, technical and professional capacity referred to in Articles 136 and 137 of the implementing rules. By contrast, the award of the contract is based on the criteria set out in Article 97(2) of the Financial Regulation, which relate to the tender quoting the lowest price under the automatic award procedure, or to the tender offering the best value for money, within the meaning of Article 138(2) of the implementing rules (judgment of 8 December 2011 in *Evropaïki Dynamiki v Commission*, T-39/08, EU:T:2011:721, paragraph 18; see also, by analogy, judgment in *Lianakis and Others*, cited in paragraph 121 above, EU:C:2008:40, paragraphs 26 and 28). Under the latter provision, the tender offering the best value for money is the one with the best price-quality ratio, taking into account criteria justified by the subject of the contract (judgment in *Evropaïki Dynamiki v Commission*, EU:T:2011:721, paragraph 20).
- 131 Although, as is shown by the use of the expression 'such as' in Article 138(2) of the implementing rules (see paragraph 69 above), that provision does not set out an exhaustive list of the criteria which may be chosen by the contracting authorities in the award phase and therefore leaves it open to the authorities awarding contracts to select the criteria on which they propose to base their award of the contract, their choice is nevertheless limited to criteria aimed at identifying the tender offering the best value for money (judgment in *Evropaïki Dynamiki v Commission*, cited in paragraph 130 above, EU:T:2011:721, paragraph 21; see also, by analogy, judgment in *Lianakis and Others*, cited in paragraph 121 above, EU:C:2008:40, paragraph 29).
- 132 Therefore, award criteria cannot include criteria that are not aimed at identifying the tender offering the best value for money, but are instead essentially linked to the evaluation of the tenderers' technical and professional capacity to perform the contract in question (judgment in *Evropaïki Dynamiki v Commission*, cited in paragraph 130 above, EU:T:2011:721, paragraph 22; see also, by analogy, judgment in *Lianakis and Others*, cited in paragraph 121 above, EU:C:2008:40, paragraph 30). In particular, a criterion based on the tenderers' experience concerns the tenderers' ability to perform a contract and therefore does not constitute an award criterion for the purposes of Article 138 of the implementing rules (judgment in *Evropaïki Dynamiki v Commission*, cited in paragraph 130 above, EU:T:2011:721, paragraph 23; see also, by analogy, judgment in *Lianakis and Others*, cited in paragraph 121 above, EU:C:2008:40, paragraph 31).
- 133 Moreover, where a contract is awarded on the basis of the tender offering the best value for money, the quality of the tenders must be evaluated on the basis of the tenders themselves and not on the basis of selection criteria, such as the technical or professional capacity of the tenderers, which were already checked at the selection stage and which cannot be taken into account again for the purpose of comparing the tenders (see judgment in *Evropaïki Dynamiki v Commission*, cited in paragraph 130 above, EU:C:2008:40, paragraph 24 and the case-law cited).
- 134 On the other hand, a criterion based on the professional experience of the members of a team which a tenderer proposes for performance of a contract may, in certain situations, constitute an award criterion within the meaning of Article 138 of the implementing rules. First of all, it should be recalled that the award criteria are not necessarily all required to be quantitative (judgment of 20 September 2011 in *Evropaïki Dynamiki v EIB*, T-461/08,

ECR, EU:T:2011:494, paragraph 147). Also, in a case where a framework contract relates to services of a highly technical nature and the precise subject-matter of the services to be provided must be determined progressively as performance of that contract proceeds, the technical skills and professional experience of the members of the team proposed are liable to have an impact upon the quality of the services rendered under the contract. In such a situation, the technical skills and professional experience may therefore determine the technical value of a bidder's tender and, consequently, its economic value (judgment of 17 October 2012 in *Evropaiki Dynamiki v Court of Justice*, T-447/10, EU:T:2012:553, paragraph 42).

135 In the present case, it must be held that the examination of the CVs which the PO carried out in the context of the award phase was intended to identify the tender that was economically the most advantageous. Inasmuch as the applicant states that the two most used working languages in the PO are English and French, the purpose of the review was to assess the technical merit of the proposed teams by the different bids in order to compare their economic merit, as provided for in Article 138 of the implementing rules. As pointed out by the Commission, it was legitimate for the evaluation committee to consider better coverage of the two working languages of the PO by the proposed team to be a comparative advantage.

136 It follows that the evaluation committee was entitled to consider, without committing a serious and manifest error, that, as pointed out by the Commission, the level of language proficiency set out in the applicants' bid could be taken into account and that Logica and Sword-Siveco's bids offered better coverage of the two working languages by their teams than the applicants' bid. The human resources that the applicants proposed were not bilingual, whereas those proposed in Logica's bid, and in that of Sword-Siveco, with the exception of one person, were.

137 In the second place, the applicants allege that the evaluation committee incorrectly maintained that their bid presented 'no information on the technical merits of the management team'. They refer to Section 1.2.1, entitled 'Project manager ([“]PRO-MAN [”])', of the part of the bid entitled 'Technical merits of the human resources for the execution of the tasks', which presented the technical merits of the proposed management team, including the professional experience of its members, their experience with tools, technologies and methodologies, their knowledge and technical background as well as their technical certifications and training attended. In their reply, they refer, in addition, to Section 1.1.1, entitled 'Project manager ([“]PRO-MAN [”])', of the same part, in which the technical merits of the proposed management team, responsible for the implementation of each specific contract, were stated. Moreover, the tender specifications did not contain any explicit request to describe the technical merits of the management team. Accordingly, the evaluation committee failed to have regard both to that bid and to the tender specifications.

138 It must be stated that, while the applicants refer, in the application, to Section 1.2.1 of the part of their bid entitled 'Technical merits of the human resources for the execution of the tasks', it is appropriate, in the absence of such a section, to refer to Section 1.3.1 of that part. In the reply, they refer, in addition, to Section 1.1.1 of that part. Sections 1.1.1 and 1.3.1 of the same part concern the 'project manager (PRO-MAN)'.

139 As correctly noted by the Commission, although the applicants set out in their bid the technical merits of three project managers, those project managers belonged, according to the service level agreement proposed by the applicants, to the implementation team and not to the management team. Consequently, the applicants' argument seeking to demonstrate an error in the evaluation committee's comment must be rejected as unfounded.

- 140 In the third place, the applicants dispute the evaluation committee's comment which reads as follows: '- professional experience — various projects [were] presented but no information what was the role of the proposed person in the given project and what technologies were used by the proposed person'. They refer to Section 1.3 of the part of their bid entitled 'Technical merits of the human resources for the execution of tasks', in which they claim that they clearly presented the role of the person in the various projects in which that person was involved and the technologies that the person used.
- 141 In the reply, the applicants claim that they explained the tools and methodologies used for each project in which each expert had participated, to show in detail the areas covered. That information was provided, in accordance with the tender specifications, in another part of the bid, relating to '[the] knowledge and [the] technical background' of each expert, in order to enable the evaluation committee to assess the merits of the proposed human resources for the execution of tasks. Accordingly, the applicants argue that they submitted everything that was required and necessary.
- 142 As a preliminary point, it must be stated that, contrary to what the applicants allege, the Commission does not accept that the evaluation committee's comment is vitiated by a serious and manifest error of assessment.
- 143 It should be noted that, as the Commission in essence argues, in Section 1.3 of the part of the applicants' bid entitled 'Technical merits of the human resources for the execution of the tasks', to which the applicants refer, the projects in which the proposed persons are alleged to have taken part and the technologies used are mentioned, in the subsection of the bid entitled 'Professional experience', but it cannot be asserted that the person concerned specifically used those technologies, and not that they were generally used in the context of the projects referred to. Similarly, in the subsection of that bid entitled 'Knowledge and technical background', relied on by the applicants in the reply, no mention was made, contrary to what the applicants allege, to the tools allegedly used by each proposed expert, in every project in which they participated previously. Thus, for some of the proposed persons, it was only indicated that they had participated in various projects involving the use of certain technologies, which were named, while for others, that information did not even appear.
- 144 Moreover, for some of the proposed persons, their general function in the cited projects was mentioned, but no information was given as to their exact role in the execution of those projects.
- 145 Finally, in the subsection of the applicants' bid relating to experience in the tasks, such as those set out in Annex 9 to the tender specifications, the information given for each of the profiles and proposed persons was general, stating only that the person had a certain number of years of experience or extensive experience in carrying out the required tasks.
- 146 Accordingly, it is not apparent from the evaluation committee's comments, mentioned in paragraph 140 above, that it committed a serious and manifest error of assessment, with the result that the complaint alleging the existence of such an error must be dismissed as unfounded.
- 147 In the fourth place, the applicants allege that the negative comments of the evaluation committee, mentioned in the evaluation report, were not in any way linked to the requirements of the tender specifications. In that regard, it suffices to state that the applicants merely make an assertion and refer to an extract from Additional Information No 3 of the PO, without formulating any arguments. That complaint must therefore be rejected as inadmissible because it is too imprecise within the meaning of Article 76 of the

Rules of Procedure.

– Logica and Sword-Siveco's bids

- 148 According to the applicants, first of all, the evaluation committee awarded Logica's bid an almost excellent score, whereas, according to the evaluation report, the descriptions of the profiles did not provide 'any added value as they ... repeated information to be found in Annex 9 of the [tender specifications]'. They also claim that, according to the tender specifications, 'the mere repetition of mandatory requirements set out in these specifications, without going into details or without giving any added value, [would] only result in a very low score'.
- 149 In that regard, it must be noted that the comment in question was the only negative observation of the evaluation committee with respect to Logica's bid and concerned only one aspect of the evaluation of that bid in the light of criterion 1.1, whereas all the comments made on the applicants' bid were negative. Moreover, the same comment having been mentioned for that bid, without it having been challenged by the applicants, it follows that, according to their argument, the score awarded to their bid should have been very low, which was not, however, the case. It must therefore be inferred that the comment was considered not significant at the time of the award of the score for both Logica's bid and that of the applicants.
- 150 In the second place, the applicants argue that the evaluation committee's comments reveal that Sword-Siveco was greatly favoured because its bid received 19 points, even though it did not fulfil the requirements of the tender specifications and should therefore have been excluded from the procurement procedure. They note that, in particular, the proposed project manager held 'no university degree', despite the fact that, according to Annex 9 to the tender specifications and Answer No 2 of Additional Information No 3 of the PO, a university degree of at least three years in a relevant subject was a mandatory requirement. Moreover, a technical consultant was proposed which '[seemed] to be for lot [No] 4' and, according to the evaluation committee, the technical merits of the proposed human resources '[did] not guarantee the continuity of the services in ["INF-SYS-END-USE-SUP"] domain'. Finally, in its bid, Sword-Siveco failed to provide a complete proposal for the technical merits of its human resources, since its bid contained 'no information on the technical merits of the contract management team'.
- 151 The applicants' argument cannot be accepted.
- 152 First, although the extract of the evaluation report indicates that Sword-Siveco did not provide a complete proposal for the technical merits of its human resources, given that its bid contained 'no information on the technical merits of the contract management team', the same comment was made with respect to the applicants' bid and no serious and manifest error of assessment was found in that regard (see paragraph 139 above).
- 153 Next, the applicants claim that the fact that a proposed person did not hold the degree at issue, as required by the tender specifications, should have led to the tenderer concerned being excluded from the procurement procedure. However, besides the fact that that argument is not supported, or based on a reference to the tender specifications providing for such a result, it must be stated that the same result was not applied to the applicants as part of the evaluation of their bid under criterion 3.3.
- 154 Finally, it must be held that the comments relied on by the applicants clearly led to a reduction of the score awarded to Sword-Siveco's bid, which is less than that obtained by the applicants' bid, even if two positive comments appear in the evaluation of Sword-

Siveco's bid and none are mentioned for the applicants' bid. It must be recalled that the applicants have not been able to demonstrate a serious and manifest error of assessment vitiating the assessment of their bid in the light of criterion 1.3.

155 It follows from all the foregoing considerations that the applicants' complaints concerning the evaluation of the tenders in the light of criterion 1.3 must be dismissed.

Criterion 1.4 entitled 'Tenderer's proposal for a take-over and hand-over'

– The applicants' bid

156 First of all, the applicants challenge the evaluation committee's comment concerning the allocation of resources that '- total effort per profile [was] not provided'. They claim to have clearly presented the proposed effort per profile in Section 1.3, entitled 'Allocation of resources', of the part of their bid entitled 'Tenderer's proposal for a take-over and hand-over'.

157 In that regard, it must be noted that in Section 1.3 of the part of their bid entitled 'Tenderer's proposal for a take-over and hand-over' to which the applicants refer, the effort per profile was indicated for the different tasks, without the total effort per profile being stated. The applicants acknowledge as much in the reply, since they state that they did not mention the sums of the columns and that a simple addition of the effort per task for each profile would have led to the total effort per profile. Accordingly, contrary to what the applicants claim, their bid did not provide the total effort per profile.

158 As to the applicants' argument that only ten pages were authorised, it suffices to note that, since the line for the total of one of the columns had already been inserted in the bid, setting out the totals for each of the other columns concerning the effort per profile would in no way have lengthened the document.

159 Consequently, the complaint relating to a serious and manifest error of assessment by the evaluation committee must be dismissed.

160 In the second place, the applicants allege that the evaluation committee incorrectly maintained that they had proposed a high effort of 79 man-days for the take-over. The cost of the take-over provided for in their bid, in the amount of EUR 22 500, was less than half of the cost estimated by the PO. The effort of 79 man-days proposed, which amounts to EUR 22 500, in accordance with the proposed daily rates for each profile participating in the take-over, meets the requirements and the estimations included in the tender specifications.

161 The applicants' argument does not, however, show a serious and manifest error of assessment by the evaluation committee.

162 It must be held that, as noted by the Commission, Answer No 5 of Additional Information No 3 of the PO stated that 'it [was] up to the tenderer to decide how he [presented] the allocation of resources during the take-over ... activities' and, accordingly, it was up to each tenderer to propose the effort which it considered optimal.

163 Moreover, as the applicants correctly mention, it was indicated, in Section 4.5 of the tender specifications, entitled 'Take-over and hand-over', that 'the maximum amount for the take-over [should] not exceed 2% of "total price (A + B + C)" of the Estimation Form'. However, the applicants were not criticised for not having registered their proposal in that budget, but for having allocated a high number of man-days for the take-over. As pointed

out by the Commission, the tenderers could arrive at the same take-over cost in different ways, namely by using the various profiles to a different extent and, thereby, fewer man-days for the same cost, since the prices of different profiles were different. Accordingly, the evaluation committee was entitled to find, without making a serious and manifest error, that the applicants' proposal contained a high number of man-days for the take-over.

164 Finally, contrary to what the applicants claim, the Commission did not set out, in the defence, a criterion of 2% of the estimation of the annual workload, but intended to show that the applicants' calculation was, in all cases, incorrect. In any event, the applicants' argument in that regard must be regarded as ineffective, because the Commission's considerations do not arise from the evaluation report or decisions ranking the applicants' bids in the cascade for the relevant lots, in that they are based on that report, and do not, therefore, affect the lawfulness of those decisions.

165 In the third place, the applicants dispute the evaluation committee's comment that their bid included many activities which were not related to the take-over itself, for example 15 man-days for the evaluation of the take-over and 9 man-days for the preparation of the take-over report. The evaluation committee is alleged not to have understood the importance of the evaluation process and of the preparation of the report and did not award their bid the points it deserved, and did so on the basis of a comment that was totally incorrect and unfounded, thereby committing a manifest error of assessment.

166 The evaluation committee's negative comment, which the applicants challenge, states the following: '- lots of activities [were] not related to the real take-over (e.g. [15] man-days for the take-over evaluation, [nine] man-days for the preparation of the take-over report)'.

167 It should be noted that the applicants accept having allocated 15 days to the evaluation of the take-over, including 9 days for the preparation of the take-over report. Accordingly, the evaluation committee's comment reflects, in that regard, the applicants' bid.

168 Furthermore, while the applicants argue that the preparation of the take-over report included the performance of certain tasks, they do not indicate, in the application, where those matters were set out in their bid. In the reply, in response to the Commission's argument stating that that information was not present in the bid and that it was not possible for the evaluation committee to take them into account, they provide no further information in that regard, merely stating that 'the application simply consolidated the take-over activities presented within the different sections of the tender related to this criterion'. They do not, however, make any references to the relevant sections. Moreover, as the Commission points out, the tender specifications were clear in that regard, in that they provided that '[t]enders must be clear and concise and assembled in a coherent fashion' and that '[t]he tenderer [was] also asked to provide a completed list indicating where to find the required documents'. Moreover, while the applicants mentioned, for the preparation of the take-over report, the 'successful deployment [and] integration of all application components', it must be held, as the Commission considered, that those activities were part of the implementation phase during the take-over.

169 Finally, as the Commission submits, the evaluation of the take-over and the preparation of the take-over report did not constitute the core activities of the take-over, in comparison with the implementation activities, such as the setting up of the environment, deployment and integration.

170 Accordingly, the applicants have not shown that the evaluation committee's comment was vitiated by a serious and manifest error of assessment.

- 171 That finding is not called into question by the applicants' argument based on the main software development life cycle methodologies. Assuming that those methodologies match the applicants' explanations, it not clear from those explanations that the methodologies made it possible to establish that activities of up to 15 man-days for the evaluation of the take-over and 9 man-days for the preparation of the report were related to the take-over activity itself.
- 172 In the fourth place, the applicants allege that the evaluation committee made a manifest error of assessment because, in their offer, they had offered to prepare an intermediate report in addition to a final take-over report. At the hearing, in response to a question from the Court, the applicants confirmed that they were challenging the evaluation committee's negative comment worded as follows: '- reports: intermediate report/draft take-over report as one report'.
- 173 It must be stated that, in the application, the applicants do not explain in what way that comment is incorrect, and merely refer to the part of their bid entitled 'Tenderer's proposal for a take-over and hand-over', in particular to Section 1.7, entitled 'Reporting and meetings', of that part, because that section allegedly described their proposal relating to the delivery of the intermediate and final take-over reports, and to Section 1.4, entitled 'Deliverables', of that part, which they say presented the calendar for the delivery of the take-over reports.
- 174 In the reply, the applicants submit that the Commission claims, incorrectly, that the presentation of the role of the intermediate report, in their bid, caused confusion in the minds of the evaluation committee, giving rise to a negative assessment. Section 1.7 of the part of that bid entitled 'Tenderer's proposal for a take-over and hand-over' contains a proposal to provide an 'Intermediate/draft take-over report covering the activities and evaluation results performed within the first two weeks along with activities planned for the next period, information on progress, deviations and adjustments, risks and mitigation measures, quality aspects, action items, and updated planning'. Accordingly, the objective pursued by the intermediate report and by the draft take-over report was very clearly presented.
- 175 In that regard, it should be noted that that description in the applicants' bid corresponded to that of an intermediate report evaluating the early stages of the take-over, and not that of a draft report, whereas the title of that description referred to both an intermediate and a draft take-over report. Therefore, it is correct that that presentation could have appeared confusing to the evaluation committee. In those circumstances, although the applicants received a positive comment for having put forward two reports — even though, as the Commission points out, the tender specifications did not expressly require different types of reports — the applicants' argument does not make it possible to consider that the evaluation committee made a serious and manifest error in making the comment in question.
- 176 Consequently, the applicants' complaint must be rejected.
- 177 In the fifth place, in the reply, the applicants argue that the Commission submits, without justification, that they 'received one additional negative comment, which is not contested in the application'. They assume that the Commission refers to the 'vague reference to "industry-standard best practice"', which, according to it, also influenced the score awarded to their bid.
- 178 It must be held that, contrary to what the applicants imply, it is not for the Commission to 'justify' that which is not disputed in the application. Moreover, to the extent that the applicants challenge for the first time in the reply that assessment of the evaluation

committee and that the challenge is not founded on any evidence disclosed during the proceedings, the Court must, as maintained by the Commission, reject that complaint as inadmissible under Article 84(1) of the Rules of Procedure.

– Logica and Sword-Siveco's bids

179 The applicants maintain, in the first place, that Logica's bid was awarded a higher score than that awarded to their bid, even though, according to the comments set out in the evaluation report, Logica's bid was incomplete, since the 'deliverables as requested in point 4.5.2 of the Specifications [were] not referred to', and did not comply with the requirements of the tender specifications.

180 The applicants' complaint must be rejected.

181 Although it is not apparent from Section 4.5.2 of the tender specifications that the required deliverables necessarily had to be mentioned, inasmuch as it was stated that '[t]he contractor [should] provide the following deliverables without further payment by the [PO] within ten (10) working days following the contract's expiry or its termination', it was none the less stated, in Section 2.7.1 of those tender specifications, that the tenderers had to submit a document mentioning, in particular, the deliverables. Accordingly, the failure to specify those deliverables resulted in the evaluation committee making a negative comment on Logica's bid and involved a reduction in the score that bid received, which was not awarded the maximum score.

182 Moreover, it should be noted that many positive comments were made in respect of Logica's bid, more so than the applicants' bid. Accordingly, the fact that Logica's bid was awarded 9 out of 10 points, while the applicants' bid was awarded 8 out of 10 points, does not demonstrate the existence of a serious and manifest error of assessment by the evaluation committee.

183 In the second place, the applicants submit that the evaluation committee awarded an unwarranted score to Sword-Siveco's bid, even though that bid should have been 'disqualified' since it did not respond to the PO's requirements for a take-over and hand-over.

184 That argument must be rejected.

185 First, the applicants claim that, according to the evaluation report, Sword-Siveco did not provide any information about the standards that the company would follow for the take-over and hand-over, or on the infrastructure of the working environment to be set up during the take-over, and no clear proposal for the allocation of resources. In that regard, it should be noted that the evaluation committee's negative comments on Sword-Siveco's bid show that, under Section 2.7.1 of the tender specifications, that bid did not include all the elements to be mentioned in the document for the take-over. Therefore, it is not apparent from the extract from the evaluation report that the document itself was missing, but only that some of the elements that were to be included therein were.

186 Secondly, the applicants submit that, according to the evaluation report, Sword-Siveco's bid did not meet the requirements set out in the tender specifications for the performance of the contract. In particular, as part of the take-over, no kick-off meeting was provided for. In that regard, it should be noted that Section 4.3.3.4 of the tender specifications did require a kick-off meeting to be held and that Sword-Siveco's bid was incomplete in that regard, which led to a reduction in the score that was awarded to it.

- 187 Thirdly, the applicants argue that Sword-Siveco's bid for the take-over and hand-over included numerous inconsistencies and contradictions which appeared clearly in the evaluation committee's comments. Sword-Siveco is alleged in particular to have provided, in many parts of its bid relating to the take-over, information concerning aspects of the hand-over and vice versa. In that regard, it should be held first that some of those errors could be described as clerical mistakes.
- 188 Moreover, it is appropriate to note that for more than half of the relevant headings for the take-over, namely 5 of 7, and for more than half of the headings relating to the hand-over, namely 3 out of 5, positive comments were also made in relation to Sword-Siveco's bid. Some errors could be considered minor and, although some clarification was needed, little information was missing and no fundamental document appeared to be missing. However, the score awarded to that bid is not very high, since it just exceeds the required threshold, and is less than that received by the applicants' bid.
- 189 It follows from the foregoing considerations that the evaluation committee may not be accused of having made a serious and manifest error of assessment in its evaluation of Logica and Sword-Siveco's bids.
- 190 In view of all the foregoing, the applicants' complaints concerning the evaluation of tenders in the light of criterion 1.4 must be rejected.

Criterion 1.5 entitled 'Tenderer's proposal for a service level agreement'

– The applicants' bid

- 191 The applicants dispute the evaluation committee's assessment that the targets set for some of the applicants' proposed additional key performance indicators ('KPI'), namely KPI-22, KPI-24 and KPI-27, were 'rather low'.
- 192 In the first place, the evaluation committee's comment that 'the target of KPI-22 (number of offers rejected) [was] rather low (10%)' is alleged to be wrong in that it demonstrates, on the contrary, a very realistic target with respect to the proposed service level. In the context of the PO's other calls for tenders, the PO gave a much higher evaluation of the same KPI. The applicants state having proposed that KPI-22, calculated on a half-yearly basis, should be evaluated on the basis of the following formula: 'Number of offers rejected by the PO / total number of offers submitted'. By relying on the experience they acquired in the course of the implementation of several framework contracts, the applicants submit that, taking account of the volume of the contract and the number of systems currently covered by lot 1, a stricter target would have been completely unrealistic.
- 193 The evaluation committee's negative comment, challenged by the applicants, states as follows: 'the target of KPI-22 (number of offers rejected) [was] rather low (< 10%)'.
- 194 As a preliminary point, it should be noted that the Commission stated that the term 'low' was to be understood as meaning 'not highly performing'.
- 195 It must be stated that, although the applicants dispute the evaluation committee's assessment, they do not provide any evidence for the view that that assessment is incorrect. The fact that they viewed such a goal as realistic, whereas the evaluation committee viewed it as low, confirms the existence of a divergence of views between the evaluation committee and the applicants, but not of a serious and manifest error of assessment made

by the committee.

- 196 Furthermore, the reference to other calls for tenders is irrelevant, since a tender must be evaluated in the light of the call for tenders to which it responds. In any case, the objective of the proposed KPI was different in the call for tenders referred to by the applicants, as it related to a target of '< 10% yearly', and not per half year.
- 197 It must therefore be concluded that the applicants' complaint must be dismissed as unfounded. That conclusion is not invalidated by the applicants' argument that the proposed KPI-22 led to the rejection of less than one bid per half year by the PO, and therefore to a "no rejected offer" situation'. That argument cannot succeed, because, as pointed out by the Commission, in submitting it, the applicants alter the content of their bid, inasmuch as they did not propose a 'KPI-22 = 0' but a 'KPI-22 < 10%'.
- 198 In the second place, the applicants dispute the evaluation committee's negative comment that 'the target for KPI-24 (number of requests for replacement) is rather low (<= 1 half-yearly)'. That comment is erroneous, because the proposal of a higher target of 'zero (0)' requests for replacement per year was unrealistic.
- 199 It is sufficient to note that, contrary to what the applicants appear to suggest, a goal of '<= 1 half-yearly' does not assume that a more immediately effective goal was a target of 'zero (0) requests for replacement per year'. Up to one replacement per half year means up to two replacements per year and a more efficient target would be of one replacement at most annually. The fact that the applicants proposed a target on a half-yearly basis, not on an annual basis, is their choice and, in spite of what they submit, does not necessarily lead to better performance being proposed. Therefore, the evaluation committee was entitled to find that the proposed target was rather low.
- 200 Furthermore, the applicants argue that that KPI was proposed in addition to what the tender specifications required and that, unless the successful tenderers proposed something further or better, a review of that KPI could only give rise to the award of extra points. In that regard, it should be noted that, as submitted by the Commission, the applicants included that additional KPI in their bid and the evaluation committee was entitled to comment. In addition, it must be stated that, leaving aside additional KPIs, which, according to the extract from the evaluation report, were not proposed in Logica's bid, that bid attracted more positive comments than the applicants' bid, which may justify the two point differential between the two scores in favour of Logica's bid. It follows that, while the applicants probably did not get any extra points for the KPI they proposed, it is not obvious that they were penalised because of it.
- 201 Accordingly, the applicants' argument cannot be accepted.
- 202 In the third place, the applicants dispute the evaluation committee's comment that the target for KPI-27 (staff turnover), namely '< 13% half-yearly', was rather low. That comment is incorrect because it would have been unrealistic to propose a higher target for KPI-27 representing the 'Number of staff replacement due to reasons beyond the Tenderer's control'. In the reply, the applicants add that KPI-27, having been offered in addition to what was requested in the tender specifications, could not but be the subject of a positive assessment, unless the successful tenderers put together a better proposal.
- 203 The applicants' argument must be rejected.

- 204 First, it should be noted that the applicants included that additional KPI in their bid, and the evaluation committee was entitled to comment thereon.
- 205 Next, the applicants' argument must be rejected for the same reasons as those mentioned in paragraph 195 above relating to KPI-22. Moreover, the fact that the applicants' bid included superior quality strategies to address any such situation, ensuring that the PO would never suffer from any problem in case any incident materialised, constitutes a mere assertion by the applicants. Similarly, they merely claim that, having delivered several framework contracts to the Commission and other organisations, its human resources department had statistics data suggesting reasonable and realistic values. Those claims are, in any event, irrelevant, since a bid must be evaluated in the light of the call for tenders to which it responds. Finally, it should be noted that, based on the example cited by the applicants, for a team of 10 people, a replacement of '1.3 persons' per half year, which amounts to '2.6 persons' over the course of a year, is a level of rotation that may be significant.
- 206 In the fourth place, the applicants claim that, in paragraph 126 of its defence, the Commission contends, incorrectly, that they do not dispute the evaluation committee's comment on the 'proposed approach to the handling of various types of requests'.
- 207 The applicants argue that, in paragraph 65 of the application, relating to lot 3, 'but [...] the same for Lots 1 and 3', they examined that element. It should be noted that, besides the fact that the wording in the application is quite obscure, paragraph 65 of the application falls within the part of the pleadings dedicated to the first plea in law. Accordingly, the fact that a complaint was set out in relation to lot 3, as part of the first plea, does not mean that it was raised in the application in relation to lot 1, as part of the third plea. It should be borne in mind that, according to the case-law, it is not the task of the Court to search through all the matters relied on in support of a plea in order to ascertain whether those matters could also be used in support of another plea (see, to that effect, judgment of 27 September 2006 in *Roquette Frères v Commission*, T-322/01, ECR, EU:T:2006:267, paragraph 209).
- 208 It must therefore be held, as the Commission has done, that the applicants' complaint, raised for the first time in the reply, without it being based on information disclosed during the proceedings, is new and, consequently, inadmissible under Article 48(2) of the Rules of Procedure of 2 May 1991.
- Logica and Sword-Siveco's bids
- 209 The applicants allege that the evaluation committee greatly favoured Logica and Sword-Siveco.
- 210 In the first place, according to the applicants, their bid obtained only 15 points, despite the fact that it was complete and complied with the tender specifications, whereas Logica's bid received 17 points, even though it did not include any KPIs, did not propose any additional KPIs and did not respond to a mandatory requirement presented in the tender specifications. In that regard, it must be stated that the applicants fail to specify the requirement to which they refer.
- 211 Furthermore, the applicants submit that, while the evaluation report indicates that Logica's bid examined the technical questions, the remainder of the comment is redacted. The applicants state that in the absence of the disclosure of the whole comment they are not in a position either to take note of the particular technical issues that were considered as positive aspects of that bid, or to compare them to the characteristics of their own bid. In addition, the tender specifications do not set out any requirement to address any technical questions.

They merely mentioned the headings to be covered by the service level agreement, one of which was the ‘proposed approach to the handling of the various types of requests’, without any instructions whatsoever about specific aspects that should be covered under each heading. The applicants claim that a new award criterion was introduced a posteriori.

212 In that regard, the evaluation committee made the following positive comment regarding Logica’s bid, with respect to the proposed approach for the handling of the various types of requests: ‘+ provided with regard to technical issues: [*redacted part in the extract from the evaluation report*]’.

213 It must be stated that, although the applicants dispute the fact that those technical issues were to be addressed in the tender submitted, they do not maintain that addressing them was banned by the tender specifications. Moreover, it cannot be considered that a new criterion was at issue, inasmuch as Logica interpreted the phrase ‘various types of requests’ so as to include those related to technical issues. In those circumstances, the evaluation committee was entitled, without making a serious and manifest error, to find that the processing of such requests constituted a positive additional element in Logica’s bid, increasing its economic value.

214 Finally, it should be noted that Logica’s bid generally received more positive comments than that of the applicants and that, in particular, it received a positive comment for the proposed approach to the handling of various types of requests, whereas the applicants’ bid on the same aspect, besides the fact that it covered only the administrative aspects, was viewed as ‘confusing’, ‘mixed’ and ‘unclear’.

215 Accordingly, it is not apparent from the difference in points obtained by the applicants’ bid and those awarded to Logica’s bid, in favour of the latter, that a serious and manifest error of assessment was made by the evaluation committee.

216 In the second place, the applicants submit that the evaluation committee did not reject Sword-Siveco’s bid despite the many negative comments about it. The evaluation report in particular indicated that the bid included proposals which fell outside the scope of the call for tenders or were unacceptable according to the tender specifications.

217 In that regard, it should be noted that Sword-Siveco’s bid was awarded a low score, just exceeding the required threshold, namely a score of 10.75 out of 20, against a score of 15 out of 20 for the applicants’ bid. Sword-Siveco’s bid received neutral or negative feedback, including that — cited by the applicants — stating that ‘this part [was] related to the provision of the services to the Bank’, and a single positive comment on additional KPIs, which may explain the low score it was awarded. Furthermore, although the applicants’ reasoning with respect to their own bid is applied to that of Sword-Siveco (see paragraph 200 above), the fact that two additional KPIs were unacceptable according to the evaluation committee could not penalise Sword-Siveco’s bid and lead to its score being reduced, but only to a failure to award it additional points.

218 Accordingly, the applicants’ arguments do not make it possible to show that the evaluation committee made a serious and manifest error of assessment when evaluating Sword-Siveco’s bid.

219 In view of all the foregoing, the applicants’ complaints relating to the evaluation of tenders in the light of criterion 1.5 must be rejected, as must, accordingly, all of their complaints concerning lot 1.

b) Lot 3

Criterion 3.1 entitled ‘Overall quality of the presentation of the tenderer’s response’

– The applicants’ bid

220 According to the applicants, the evaluation committee accepted that it had misinterpreted the essence of criterion 3.1. The approach taken by the evaluation committee was therefore vitiated from the beginning by a manifest error of assessment and clearly showed that the evaluation committee had distorted that criterion.

221 In that regard, it should be noted that the evaluation committee did not accept that it had misinterpreted the essence of criterion 3.1 and that the applicants’ argument is identical to that raised, in respect of that criterion, as part of the first plea in law and which has already been rejected (see paragraph 81 above).

– ARHS Cube’s bid

222 The applicants claim, in the first place, that the evaluation committee took account of the use of ‘coloured presentations’ in ARHS Cube’s bid, disregarding the fact that they could play no part in the assessment given that the tenderers were entitled to use a presentation in black and white for their bid.

223 That argument cannot be accepted. The applicants rely on vague environmental considerations to the effect that the use of coloured presentations should be kept to a minimum. This means that they accept that such a restriction did not emanate from the tender specifications. Accordingly, the fact that the evaluation committee took account of such presentations does not make it possible to hold that it made a serious and manifest error of assessment. The present complaint must therefore be rejected as unfounded.

224 In the second place, the applicants submit that the evaluation committee found that ARHS Cube’s bid was very clear and consistent, whereas that of the applicants was ‘less easy to read’, without explaining why the latter was of a lower quality. Moreover, this was not an award criterion, especially ‘in a multilingual Europe where an EU institution aims to select an IT partner and not native English speakers’.

225 It must be stated that the applicants distort the evaluation committee’s comment and that their argument is factually incorrect. The committee indicated that the presentation of the applicants’ bid was not always easy to read, without mentioning any aspect of English linguistics, and mentioned, ‘by way of example, that some spaces [were] missing’ in the applicants’ bid. That plea in law must therefore be rejected as unfounded.

226 Consequently, the applicants’ complaints relating to the evaluation of the bids under criterion 3.1 must be rejected.

Criterion 3.2 entitled ‘Tenderer’s approach to the quality assurance and to project management to be used during the execution of the contract’

227 The applicants challenge, in the first place, the evaluation committee’s negative comment on delivery management, which stated as follows: ‘delivery management — general, without details “the tenderer [should] comply with the [PO]’s requirements, as stated in the tender specifications”’. They state that their bid presented a detailed analysis in that regard, in accordance with the tender specifications, with, for example, reference to delivery notes and approval procedures. Since the tender specifications did not define any other requirements or rules on aspects to be presented or analysed in the proposals relating to approaches to delivery management, the bid fully complied with those specifications. The

evaluation committee, accordingly, erred in that assessment.

228 It should be noted that the applicants merely assert that their bid provided a detailed description of their proposed approach to delivery management, as required by the tender specifications, and refer to Section 2.5 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management'. In any event, it should be noted that that point did not contain any description of the proposed solutions. As the Commission correctly submits, that point contains a simple definition of the delivery management approach, without detailed information, in particular as to how the management thereof would actually be conducted by the applicants or as to procedures to ensure the quality of the services provided. Accordingly, the evaluation committee was entitled to find, without making a serious and manifest error, that the proposal in that regard was 'general, without details'.

229 Furthermore, as stated by the Commission, it must be held that, for the reasons described in paragraph 98 above, the simple statement that 'the tenderer [would have to] comply with the [PO]'s requirements, as stated in the tender specifications' is not sufficient in order for a bid to be awarded more points.

230 Consequently, the applicants' plea must be rejected.

231 In the second place, the applicants claim that the evaluation committee stated, without basis, that, with respect to documentation management, their proposal did not provide any information on the linguistic and editorial quality of the documentation, thereby making a manifest error of assessment. Their proposal presented the approach followed in order to ensure the production of 'quality-assured' versions of the documents to be delivered. The applicants refer in that regard to Sections 1.6 and 2.6 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management'.

232 Regarding Section 1.6 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management', the applicants submit that it expressly stated that '[a]ll deliverables [would] pass quality review' and presented the approach used to ensure the quality of the deliverables. However, it must be stated that the applicants do not argue that mention was made of the linguistic and editorial quality of the documentation. Moreover, although the applicants maintain that the disputed comment is incorrect, they do not indicate where the linguistic and editorial quality of the documentation was specifically mentioned in Section 2.6 of that part; it must be stated that no such reference is apparent.

233 Accordingly, the applicants' complaint must be rejected.

234 In the third place, the applicants submit that the evaluation committee argued, without basis and incorrectly, that some tools, such as the open source office suite 'OpenOffice', were redundant in the light of the technical environment of the PO. First, they state that, since there were no requirements within the tender specifications forbidding proposals for complementary tools allowing the optimum execution of the contract, they analysed the requirements of the contract as presented in the tender specifications and proposed appropriate complementary tools to ensure the quality assurance and management of the project during the execution of the contract. Secondly, they state that the implementation, testing and deployment plans were specific applications, and, therefore, that the commercial tools, or the open source software alternatives thereto, and the versions of the tools to be used, depended on the requirements of each application. They claim to have proposed a variety of tools in order to deal with any possible requirement of the PO and its applications, which afforded the PO a high degree of flexibility.

- 235 In that regard, it is sufficient to recall that the tenderers were informed of the existing technical environment and that, as mentioned in the tender specifications, the standard workstation configuration at the PO included only the proprietary office suite 'MS Office', and not the open source office suite 'OpenOffice', proposed by the applicants. Accordingly, for the reasons already mentioned in paragraph 106 above, the evaluation committee may not be criticised for having considered that a tool, such as the open source office suite, was redundant.
- 236 In the fourth place, regarding the proposed approach to version handling, the applicants allege that the evaluation committee maintained, without any basis and incorrectly, that they had indicated using the 'Subversion' software and mentioned, in Section 5.2 of their bid, using the 'Rational ClearCase' system. The applicants, referring to Sections 5.2 and 5.5 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management', submit that that system would have been used for the management of each individual deployment throughout the implementation life cycle of each application, whereas the Subversion software would have been used for the management of the source code and for handling versions as part of the configuration management approach proposed by the applicants.
- 237 The evaluation committee's negative comment, disputed by the applicants, states as follows: 'approach to version handling: Subversion [was] said to be used, whereas in point 5.2, reference to Rational ClearCase [was] made'.
- 238 It must be stated that the applicants do not dispute that, as pointed out by the Commission, the 'Rational ClearCase' system and the 'Subversion' software are both configuration management tools which have the same purpose. In Section 5.5 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management', more specifically relating to the management of the source code and versions, that software was certainly mentioned. However, in Section 5.2 of that part, the applicants made a list of tools used in the software development process, in which that system appeared, but not the software. For the same reasons as those already set out in paragraph 110 above, doubts could arise as to the consistency of that bid as a result of the proposals in the bid; accordingly, the evaluation committee's assessment does not appear to be vitiated by a serious and manifest error of assessment.
- 239 In the fifth place, regarding the alleged lack of comment on their part with respect to the evaluation committee's negative comment regarding 'software development/maintenance methods and tools', the applicants refer to paragraph 19 of the reply. The analysis and design were presented together, first, because of the restriction on the number of pages and, secondly, because the official guidelines of the Commission are worded to that effect, the applicants referring to a document entitled 'Rational Unified Process'.
- 240 It should be noted that the applicants disputed for the first time in the reply the evaluation committee's negative comment stating the following: '- phases description — in point 5.2 reference to six core groups is made, nevertheless only five [were] provided'. Although the applicants refer to paragraph 19 of the reply, in paragraph 42 thereof, they do not explain the relevance of that section to the admissibility of that complaint or as to its merits. Therefore, as the Commission correctly maintains, that complaint must be regarded as inadmissible. The complaint is, in any event, unfounded for the same reasons as those already mentioned in paragraph 115 above.
- 241 In view of all the foregoing, the complaints concerning the evaluation of the tenders in the light of criterion 3.2 must be rejected.

- Criterion 3.3 entitled ‘Technical merits of the human resources for the execution of the tasks’
- The applicants’ bid

- 242 According to the applicants, in the first place, the evaluation committee penalised their bid, first, because it incorrectly found that the proposed experts were not bilingual in English and French. They submit that they proposed the technical merits of the team responsible for the execution of the tasks provided for in the contract, in accordance with the tender specifications and Answer No 9 of Additional Information No 5 of the PO, namely a project team covering both languages. The evaluation committee should therefore have assessed whether a tenderer was proposing coverage in both English and French and not, rather than the capacity of individual experts in the team and their CVs. Accordingly, it infringed the tender specifications and the additional information issued by the PO, and evaluated their bids on the basis of requirements that were not mentioned in the tender specifications, thus infringing Article 97 of the Financial Regulation and making a manifest error of assessment.
- 243 In addition, the experts’ CVs were evaluated in the selection phase and the evaluation committee was not entitled to evaluate them again during the award phase. In so doing, the Commission made a serious and manifest error and misapplied the judgment in *Lianakis and Others*, cited in paragraph 121 above (EU:C:2008:40).
- 244 In the reply, the applicants add that, in the part of their bid entitled ‘Technical merits of the human resources for the execution of the tasks’ for lot 3, it was stated that three analyst-programmers had an elementary knowledge of French while the fourth had a very good command of French. According to them, since an analyst-programmer’s primary mission is programming, a basic command of French was sufficient to analyse technical documents if necessary. In any event, they argue that the analyst-programmer was assisted by the technical consultant and project manager, who had knowledge of French. Finally, with regard to the profile of the person supporting the end-user of information systems, two out of three persons had a ‘basic command of French’. The staff’s level of French would therefore have been sufficient.
- 245 The applicants’ argument cannot be accepted.
- 246 In that regard, it should be noted that the evaluation committee made the following negative comments: ‘1 out of 3 [project managers] has no knowledge of French’, ‘only 1 out of 4 [technical consultants] has French knowledge’, ‘only 1 out of 6 [analyst-programmers] has a working knowledge of French’ and ‘none of the 3 [persons supporting the end-user of information systems] has a working knowledge of French’.
- 247 First of all, it should be noted that the applicants put forward no evidence calling into question the truth of the evaluation committee’s comments. A distinction must be made between a basic command of a language and a good knowledge thereof. Accordingly, given the indications mentioned in the applicants’ bid with respect to the proposed persons’ language skills, the evaluation committee’s comments concerning the analyst-programmers and the persons supporting the end-user of information systems were correct.
- 248 Next, it must be stated that the applicants correctly point out that, in Answer No 9 of Additional Information No 5 of the PO, the tenderers were informed that ‘[t]he proposed human resources [were to] have knowledge of at least one of the working languages’. As indicated by the applicants, it was further stated that the tenderers were asked to ‘note that the coverage of the working languages by the proposed human resources [would] be taken

- into account by the evaluation of the offers for criterion 3'. Accordingly, while it is true that it was not a requirement that the proposed human resources be bilingual in English and French, it is also evident, contrary to what the applicants claim, that during the evaluation of the bids in the light of criterion 3.3, the assessment of the proposed persons' knowledge of languages and the proposed coverage necessarily included the taking into consideration of the language proficiency indicated in the bid, which is not a criterion added by the evaluation committee.
- 249 Finally, for the same reasons as those set out for criterion 1.3 (see paragraphs 127 to 135 above), it is necessary to dismiss the applicants' contentions criticising the PO for conflating the selection and award phases by evaluating the CVs of the proposed team members in both phases.
- 250 It follows that the evaluation committee was entitled to find, without making a serious and manifest error, that the language proficiency stated in the applicants' bid could be noted and that ARHS Cube's bid provided for better coverage of the two working languages by its proposed team, which was bilingual, than that offered by the applicants' bid.
- 251 In the second place, according to the applicants, the evaluation committee incorrectly held that one of the proposed trainers had no relevant university degree. They submit that the tenderers were expressly asked to provide adequate human resources for the execution of tasks, particularly in terms of knowledge, skills and experience. Mr D. possesses a university degree, a 'Laurea', MA, in foreign languages and literature from the University of Turin (Italy). That degree provided him with sufficient pedagogical skills and appropriate knowledge to adequately cover the nature of the tasks falling within the information systems trainer profile, which was, according to Annex 9 to the tender specifications, to '[p]repare and give training courses about the developed system in different languages'.
- 252 In the reply, the applicants stated that the systems in question were disclosed on page 70 of the tender specifications and that they all fell within the administrative processes of the PO. The trainer for information systems was invited to train the agents of the PO, not IT technicians, in order to show them how to use the systems to implement or monitor their work and processes. The applicants submit that the 'relevant field' in which the trainer should have a degree was that of 'teaching', together with advanced professional experience in teaching in the field of IT. Mr D.'s CV included both of those aspects and 'a graduate in literature such as Mr D. [was] best suited' for the execution of those tasks.
- 253 Finally, the PO took no account of the fact that the proposed expert had in the previous years carried out numerous training missions in similar fields for the Commission itself. The evaluation committee's comment was therefore incoherent.
- 254 The evaluation committee's negative comment, disputed by the applicants, states the following: 'no relevant university degree [Mr D.] ([information systems trainer])'.
- 255 It should be noted, as the applicants have done, that, both in Annex 9 to the tender specifications and in Answer No 2 of Additional Information No 3 of the PO, there was no predefined requirement for each profile, with the exception that all the proposed human resources were required to have a university degree of at least three years in the relevant field and a minimum of three years of relevant professional experience. In Answer No 2 of Additional information No 3 of the PO, it was stated that '[t]he human resources [would] be evaluated against the nature of the tasks described in Annex 9 for each of the profiles'.
- 256 With respect to the profile of the information systems trainer, it was mentioned in the

tender specifications that he was to 'prepare and give training courses about the developed system in different languages'. In their bid, the applicants indicated, as being a 'minimum requirement' for the training and the qualifications for that profile, the award of a '[u]niversity degree of at least three years in computer science/IT or other computer related field' (Section 1.3.4 of the part of their bid entitled 'Technical merits of the human resources for the execution of tasks). With respect to Mr D., one of the two trainers for the proposed information systems, the applicants stated that he had a 'Degree ("Laurea", MA) in foreign languages and literature'.

257 First of all, as pointed out by the Commission, the applicants' argument contradicts the terms of their bid. They submit in the reply that the relevant field is that of education whereas they identified, in the bid, the requirement for the possession of a '[u]niversity degree of at least three years in computer science/IT or other computer related field' (see paragraph 256 above). In any event, there is no mention that Mr D. had a teaching degree.

258 Next, while it is indisputable that Mr D. held a university degree, the evaluation committee may not be considered as having made a serious and manifest error in holding that foreign languages and literature did not fall within the relevant field. In that regard, it is difficult to conceive that those disciplines fall within the field of computer science or a related IT field, which the applicants themselves referred to in their bid as the relevant fields, and to subscribe to the applicants' assertion that a 'graduate in literature such as Mr D. [was] best suited' in order to 'prepare training material' in that field.

259 Finally, the applicants' argument concerning Mr D.'s professional experience is ineffective, because, as the applicants themselves recall, one of the conditions related to the award of a degree. Therefore, professional experience could not offset, in the present case, the lack of the relevant degree required by the tender specifications.

260 Accordingly, the evaluation committee may not be criticised for having made a serious and manifest error in its assessment in that regard.

261 That conclusion is not called into question by the applicants' argument that, even if Mr D. was not suitable, the second trainer proposed by the applicants would have been enough to meet the requirements. According to the applicants, given the annual estimated workload for the information systems trainer profile in the tender specifications, one person would have been more than enough to meet the human resources requirements as regards training. That argument must be rejected as ineffective because, assuming that those assertions were true, the fact remains that they cannot refute the observation relating to Mr D.

262 In the third place, according to the applicants, the evaluation committee incorrectly maintained with respect to the professional experience of the proposed human resources that 'various projects [were] presented but [that] no information what was the role of the proposed person in the given project and what technologies were used by the proposed person' was provided. They refer to Section 1.3 of the part of their bid entitled 'Technical merits of the human resources for the execution of the tasks' in which the role of each person in the various projects in which they participated is clearly presented as well as the other technologies that they used. Moreover, they claim that, although the evaluation committee felt that certain elements were not clear or were missing, it did not provide any indication as to the elements concerned. The evaluation committee evidently did not take account of that part and thus made a manifest error of assessment.

263 The evaluation committee's negative comment, disputed by the applicants, states the following: '— professional experience — various projects [were] presented, but no information what was the role of the proposed person in the given project and what

technologies were used by the proposed person’.

- 264 It is not apparent from the evaluation committee’s comment that it is vitiated by a serious and manifest error of assessment. Consequently, that plea in law must be rejected as unfounded.
- 265 First, it should be noted that the applicants mentioned, in Section 1.3 of the part of their bid entitled ‘Technical merits of the human resources for the execution of the tasks’, to which they refer, in the part entitled ‘Professional experience’, the projects in which the proposed persons participated and the technologies they used, but it is not possible to state that the person concerned specifically used those technologies, rather than they were generally used in the context of the projects referred to. Moreover, for some of the proposed persons, their general function in the projects referred to was mentioned, but without information about their exact role in the execution thereof.
- 266 Finally, in the subsection of the applicants’ bid relating to the experience in the tasks such as those specified in Annex 9 to the tender specifications, the information mentioned for each of the profiles and each of the proposed persons was general; it stated only that the person had some years’ experience or extensive experience in carrying out the required tasks.
- 267 Second, to the extent that the applicants claim that the examination of the experience within the context of an award criterion is contrary to Article 97 of the Financial Regulation, as interpreted by the Court of Justice in the judgment in *Lianakis and Others*, cited in paragraph 121 above (EU:C:2008:40), it should be noted that, in that regard, the applicants merely mention that case-law, without specifying how it would apply to the present case and without establishing how the evaluation committee disregarded it. Accordingly, that argument must be rejected as inadmissible on the ground that it is too imprecise.
- 268 To the extent that the applicants seek to challenge the taking into consideration of CVs of the members of the team proposed in the award phase, that argument should be rejected for the same reasons as those indicated in the assessment of the applicants’ bid for lot 1, in the light of criterion 1.3 (see paragraphs 129 to 134 above). In the present case, it must be held that the examination of the CVs which the PO carried out in the context of the award phase was intended to identify the tender that was economically the most advantageous. That examination was designed to assess the economic value of the teams proposed by the various tenders in order to be able to compare their economic value, as provided for in Article 138 of the implementing rules.
- 269 In the fourth place, the applicants submit that, since the knowledge of the programming language ‘Perl’ was not a requirement of the tender specifications, the evaluation committee had no basis for claiming that the ‘proposed [analyst-programmers] [had] no knowledge of [that programming language]’ and that ‘only one of the proposed [project managers and technical consultants] [knew that programming language]’. They submit that they proposed, in full compliance with the tender specifications, a team which had the required skills and experience and considerable experience of projects carried out for the PO, including those in which that programming language was used. Furthermore, in the part of their bid entitled ‘Project / activity reference forms (Annex 8)’, they described two projects and presented the use of the programming language in question during their implementation. Therefore, the human resources of the applicants involved in the implementation of those projects would, evidently, have learnt the programming language at issue and, in that regard, the applicants mention, by way of indication, Mr K., proposed for the profile of analyst-programmer. Accordingly, the evaluation committee made a

serious and manifest error of assessment.

- 270 First, as regards the analyst-programmers, the evaluation committee's negative comment, disputed by the applicants, states the following: 'the proposed [analyst-programmers] [had] no knowledge [of the programming language "Perl"]'. It should be noted that, for the six proposed persons for that profile in the subsection entitled 'Minimum requirements of the human resources proposed for the execution of tasks — qualifications, experience, skills and knowledge of the proposed team', of the part of the applicants' bid entitled 'Technical merits of the human resources for the execution of tasks', no mention was made of knowledge of that programming language. Accordingly, assuming that that information was mentioned in another part of the bid, as argued by the applicants, it must be held, as the Commission points out, in essence, that it was not for the committee to compile the information, especially as it would have been normal for information concerning knowledge of that programming language to have been specified in the above subsection.
- 271 Second, with regard to the project managers and technical consultants, the evaluation committee's negative comment, disputed by the applicants, states the following: 'only one of the proposed [project managers] and [technical consultants] [had] a working knowledge of [the programming language "Perl"]'. Those comments are confirmed by the content of the applicants' bid. It is apparent from Sections 1.3.1 and 1.3.2 of the part of the bid entitled 'Technical merits of the human resources for the execution of tasks' that, respectively, one of the proposed project managers, Mr S., and one of the proposed technical consultants, Mr C., knew that programming language. Moreover, in the reply, the applicants confirm that only those two persons had knowledge of that programming language.
- 272 Accordingly, the applicants' arguments seeking to call into question the evaluation committee's assessment of the knowledge of the programming language 'Perl' must be rejected as unfounded.
- 273 That conclusion is not invalidated by the applicants' arguments that the Commission had planned to replace the programming language 'Perl' and that the applicants' bid was evaluated in an unquestionably discriminatory manner. In that regard, the applicants argue that the tender specifications set out a plan to replace the said programming language with 'a standard workflow tool'. To replace a tool, in the present case 'WOOD', with a standardised workflow tool, it is necessary and sufficient to identify the functions carried out by the tool in question, so that knowledge of the technological base underpinning it, or lack thereof — namely, in the case of 'WOOD', that programming language — does not play any role. The official standard workflow tool used by the Commission is 'Documentum' and four of the six proposed persons for the analyst-programmer profile had a very good knowledge of that tool. That definite advantage for the applicants should have been the subject of a positive assessment. The PO's plans for the replacement of that programming language, set out in the tender specifications, prove that the Commission contradicts itself when it states that '[the programming language in question was] a critical element required for [the present] lot'.
- 274 It should be noted that the use of the programming language 'Perl' is mentioned several times in the tender specifications: in Annex 11, entitled 'IT applications description', not only for the information system 'CERES', as noted by the applicants, but also for the application 'PROCATX', in Annex 12, entitled 'Technical environment and standard operating procedures', in which it was stated that that programming language was the scripting language, and in the list of products used by the PO.
- 275 However, although the possibility of introducing a standard workflow tool is mentioned in the tender specifications for the information system 'CERES' within the period allowed by

the new framework contract, the fact remains that the programming language 'Perl' was clearly identified as being used. As pointed out by the Commission, the fact that a technology was likely to be replaced in the future was irrelevant since, until that replacement becomes effective, the service was to be provided in that programming language.

276 Moreover, as contended by the Commission, the applicants' argument that, when a tool is replaced, it is necessary to master that tool, whereas the mastery of the underlying technology, in the present case, the programming language 'Perl', 'does not play any role', must be rejected. The applicants do not show how, from a technical point of view, the two items could be separated from each other.

277 Finally, as pointed out by the Commission, Annex 9 to the tender specifications stated that the role of the analyst-programmer would be, for example, to conduct a technical analysis of new user requirements and fix bugs. It is therefore evident that in order to accomplish those tasks, an analyst-programmer should know the technology on which an application was based.

– ARHS Cube's bid

278 The applicants state that the evaluation committee incorrectly awarded their bid a lower score than that awarded to ARHS Cube's bid. The evaluation committee's comments clearly showed that that bid did not meet the requirements of the tender specifications, in particular because two of the proposed analyst-programmers had not been awarded a university degree. Moreover, the evaluation committee stated that the technical merits of the human resources proposed by ARHS Cube '[did] not guarantee the continuity of the services in PRO-MAN, TEC-CONS and INF-SYS-END-USE-SUP domain'.

279 In that regard, it should be noted that the lack of a degree in the relevant field, as was the case for one of the information systems trainers proposed by the applicants, namely Mr D., was equivalent, in the context of the tender specifications, to not having a degree (see paragraphs 254 to 261 above). Consequently, according to the applicants' reasoning, their bid did not fulfil the requirements of the tender specifications in that respect either.

280 Moreover, the fact that the technical merits of the proposed human resources in ARHS Cube's bid '[did] not guarantee the continuity of the services in PRO-MAN, TEC-CONS and INF-SYS-END-USE-SUP domain' was clearly taken into account inasmuch as that bid did not receive a very high score. However, it must be observed that one positive comment was made on ARHS Cube's bid, concerning the bilingualism of the whole of the proposed human resources, whereas only negative comments were made in respect of the applicants' bid. Aside from the comments disputed by the applicants, it was stated, in their bid that 'point 1.1 (nature of the tasks per profile) [did] not provide any added value, as it [repeated] information to be found in Annex 9 of the [tender] specifications'.

281 It follows from all the foregoing considerations that the applicants have not shown that the evaluation committee made a serious and manifest error in its assessment and, therefore, the applicants' complaints on the evaluation of the bids in the light of criterion of 3.3 must be dismissed.

– Criterion 3.4 entitled 'Tenderer's proposal for a take-over and hand-over'

– The applicants' bid

282 The applicants dispute, in the first place, the evaluation committee's comment that, with respect to the allocation of resources, 'total effort per profile [was] not provided'. Their bid

presented the proposed effort per profile in Section 1.3, entitled ‘Allocation of resources’, of the part of their bid entitled ‘Tenderer’s proposal for a take-over and hand-over’. In that regard, it must be noted that, in that paragraph, the effort per profile was suitable for the different tasks but, contrary to what the applicants allege, total effort per profile was not stated. Accordingly, the evaluation committee’s comment is not vitiated by a serious and manifest error of assessment.

283 In the second place, the applicants allege that the evaluation committee incorrectly maintained that they had proposed a high effort of 101.5 man-days for the take-over. The cost of the proposed take-over represented approximately 40% of the cost estimated by the PO for the take-over of the applications. The effort of 101.5 man-days, amounting to EUR 26 240 according to the daily rates provided for each participant profile, fully complied with the requirements and estimates included in the tender specifications. Accordingly, the evaluation committee did not comply with the evaluation criteria set out in those specifications, thereby making a serious and manifest error of assessment.

284 The applicants add that the tender specifications included the obligation to provide at least 10 working days for each human resource in order to enable it to become familiar with the applications concerned. They indicate that they allocated a team of 6 consultants, who were required to work for at least 60 days on the take-over implementation phase, and a total of 41.5 days on project management activities and on planning, acceptance and evaluation activities. They claim that such an allocation of effort fully complied with the main software development life cycle methodologies. The effort proposed in their bid as well as the distribution among the various proposed activities was totally correct, justifiable and well balanced.

285 It should be noted that it was stated in Answer No 5 of Additional Information No 3 of the PO that it ‘[was] for the tenderer to decide how he [presented] the allocation of resources during the take-over and hand-over activities’. Accordingly, it was up to each tenderer to propose the effort it considered optimal for the take-over.

286 Moreover, as the applicants correctly mention, in Section 4.5 of the tender specifications entitled ‘Take-over and hand-over’, it was admittedly stated that ‘the maximum amount for the take-over [should] not exceed 2% of “[total price] (A + B + C)” of the estimation form’. However, the applicants were not criticised for not having registered their proposal in the budget, but for having allocated a large number of man-days for the take-over. As correctly pointed out by the Commission, the tenderers could have achieved the same cost in different ways, that is to say by making different use of the various profiles and, therefore, fewer man-days for the same amount since the costs for the profiles were different. Accordingly, the evaluation committee did not make a serious and manifest error in finding that the applicants’ proposal provided for a high number of man-days for the take-over.

287 Finally, it must be stated that the applicants refer to the main software development life cycle methodologies, but they do not argue that those methodologies, assuming that they match the applicants’ explanations, could, under the tender specifications, be applied in the present case, or that they fettered in any way the evaluation committee’s discretion.

288 Therefore, the applicants’ argument does not lead to the conclusion that the evaluation committee’s comment is vitiated by a serious and manifest error of assessment.

289 In the third place, the applicants dispute the evaluation committee’s comment that their bid included many activities that were not related to the take-over itself, for example 16 man-days (16% of the total effort) for the take-over evaluation and 10 man-days for the preparation of the take-over report. The evaluation committee criticised the bid on the basis

- of an erroneous and unfounded comment, thereby making a serious and manifest error of assessment.
- 290 It should be noted that the applicants accept having allocated 16 days to the execution of the take-over evaluation activities, of which 10 days were allocated to the preparation of the take-over report. Accordingly, the evaluation committee's comment reflects, in that regard, the contents of the applicants' bid.
- 291 The applicants none the less argue that the preparation of the take-over report included the execution of certain tasks and that the evaluation committee, consequently, did not understand the importance of the take-over evaluation procedure and of the preparation of the take-over report. In that regard, it should however be noted that the applicants do not indicate in the application where those details appeared in their bid. In addition, although the applicants mention, for the preparation of the take-over report, 'successful deployment & integration of all application components' activities, it must be held, as pointed out by the Commission, that those activities fell within the implementation phase during the take-over.
- 292 Finally, the take-over evaluation and the preparation of the take-over report did not represent the core activities of the take-over, in comparison with the implementation activities, such as the setting up of the environment, deployment and integration.
- 293 Accordingly, the applicants have not shown that the comment in question was vitiated by a serious and manifest error of assessment.
- 294 In the fourth place, the applicants argue that the evaluation committee committed a manifest error of assessment by making, in relation to the take-over reports, the following negative comment: 'reports: intermediate report/draft take-over report as one'. They submit that they proposed the submission of an intermediate report and a final take-over report.
- 295 It must be stated, first of all, that the applicants do not explain how the comment in question is incorrect, as they merely refer to the part of their bid entitled 'Tenderer's proposal for a take-over and hand-over', in particular to Section 1.7, entitled 'Reporting and meetings', of that part, because that section set out their proposal for the submission of the intermediate and final take-over reports, and to Section 1.4, entitled 'Deliverables', of that part, which presented the schedule for the delivery of the take-over reports.
- 296 Next, it should be noted that the description in the applicants' bid corresponded to that of an intermediate take-over report, evaluating the early stages of the take-over, not a draft take-over report, although the title of that description referred to both an intermediate report and a draft take-over report. Therefore, for the same reasons as those set out in the examination of the evaluation of the tender submitted for lot 1 in the light of criterion 1.4, that confused presentation elicited a negative comment in relation to the bid (see paragraph 175 above).
- 297 Accordingly, the applicants' complaint must be rejected.
- ARHS Cube's bid
- 298 The applicants allege that the evaluation of ARHS Cube's bid presents obvious deficiencies, since the comments made in relation thereto in the evaluation report reveal that that bid did not fully comply with the requirements of the tender specifications.
- 299 In first place, the applicants submit that, according to the evaluation report, the take-over

and the hand-over plans proposed by ARHS Cube did not meet the requirements of the tender specifications and that ARHS Cube's bid for the take-over included a 'reference to the demonstration of the application by the [PO], which was not foreseen in the [tender specifications]'.

300 In that regard, it must be stated that the evaluation committee simply noted in ARHS Cube's bid an element that had not been provided for in the tender specifications, but it cannot be concluded that that proposal was found to be contrary to the tender specifications. Furthermore, regarding the take-over and hand-over plans proposed by ARHS Cube, the Commission explained that an incorrect date was set out in the bid, the one-month period for the hand-over having been complied with by ARHS Cube and only the acceptance of the take-over, a matter for the PO, having gone beyond the period provided for by two days. It should be recalled in that regard that explanations or clarifications capable of casting light on the wording of the contested act may, as in the present case, be provided in the course of the proceedings (see, to that effect, judgments of 15 July 1960 in *Präsident and Others v High Authority*, 36/59 to 38/59 and 40/59, ECR, EU:C:1960:36, pp. 423, 440; 6 April 1995 in *BPB Industries and British Gypsum v Commission*, C-310/93 P, ECR, EU:C:1995:101, paragraph 11; and the Opinion of Advocate General Léger in *BPB Industries and British Gypsum v Commission*, C-310/93 P, ECR, EU:C:1994:408, paragraph 24). According to the case-law, where the author of a contested decision provides explanations to supplement a statement of reasons which is already adequate in itself, that does not go to the question whether the duty to state reasons has been complied with, though it may serve a useful purpose in relation to review by the European Union judicature of the adequacy of the grounds of the decision, since it enables the institution to explain the reasons underlying its decision (see, to that effect, judgment of 16 November 2000 in *Stora Kopparbergs Bergslags v Commission*, C-286/98 P, EU:C:2000:630, paragraph 61).

301 In the second place, the applicants argue that the evaluation committee's comments demonstrate the incomplete nature of ARHS Cube's bid. First of all, no information was provided on the allocation of resources for the take-over and hand-over. Next, the deliverables were not described in detail. Finally, only general information regarding the familiarisation of its staff with relevant applications and the work environment to be set up was given. That argument must be rejected, since it must be stated that, although the evaluation committee found that some information was missing, the document, as such, relating to ARHS Cube's proposal for the take-over and hand-over, had been provided.

302 Furthermore, the applicants claim in the reply that to the extent that ARHS Cube did not provide any details about the fixed price hand-over cost, even though this was a mandatory requirement under the tender specifications, presenting instead unspecified 'criteria for its conditional calculation', the latter should have been 'disqualified'. That argument has no basis in fact however, as no comment to that effect is apparent from the extract of the evaluation report.

303 Finally, in as much as the applicants allege discriminatory treatment as a result of the favourable treatment that the evaluation of ARHS Cube's bid allegedly received, it should be recalled that, although their bid received a negative comment in respect of the lack of information for the total effort, it was not further 'disqualified'. Moreover, it should be noted that in relation to more than half of the relevant headings for the take-over, namely four out of seven, and for more than half of the relevant headings for the hand-over, namely three out of five, positive comments were made in relation to ARHS Cube's bid. However, the score that was awarded to it is not very high, since it just exceeds the required threshold, and is lower than that awarded to the applicants' bid. It is therefore possible to find that the negative comments made by the evaluation committee, noted by the applicants, clearly

- contributed to the lower score awarded to ARHS Cube's bid, and that it does not appear that the evaluation committee gave favourable treatment to the evaluation of ARHS Cube's bid.
- 304 Accordingly, the applicants' complaints regarding the evaluation of ARHS Cube's bid cannot be accepted.
- 305 In view of all the foregoing, the applicants' complaints on the evaluation of the bids in the light of criterion 3.4 must be rejected.
- Criterion 3.5 entitled 'Tenderer's proposal for a service level agreement'
- 306 According to the applicants, the evaluation committee incorrectly maintained that the targets set for some of the proposed additional key performance indicators, namely KPI-22 and KPI-27, were rather low.
- 307 In the first place, the evaluation committee's assertion that 'the target of KPI-22 (number of offers rejected) [was] rather low (10%)' is incorrect, since it constitutes, on the contrary, a very realistic target regarding the service level proposed. The applicants state that they proposed an evaluation of KPI-22 calculated, on a half-yearly basis, on the basis of the following formula: 'number of offers rejected by the [PO] / total number of offers submitted'. By relying on the experience gained during the implementation of several framework contracts, they claim that, given the volume of the contract and the number of systems currently covered by the present lot, a stricter target was wholly unrealistic.
- 308 It should be noted that, although the applicants dispute the evaluation committee's assessment, they provide no evidence for the view that that assessment is incorrect. The fact that they had seen such a goal as realistic, whereas the evaluation committee considered it rather low, confirms the existence of a difference of views between the evaluation committee and the applicants, but not a serious and manifest error of assessment by that committee. Furthermore, the reference to other calls for tenders is irrelevant, since the bid must be evaluated in the light of the call for tenders to which it responds. Accordingly, the applicants' complaint must be rejected.
- 309 In the second place, the applicants submit that the evaluation committee claimed, incorrectly, that the target of KPI-27 (staff turnover) was rather low (< 13% per half year). According to the applicants, it would have been unrealistic to propose a higher target for KPI-27, representing the 'number of staff replacement due to reasons beyond the tenderer's control'.
- 310 The applicants' argument on that point must be rejected as unfounded. First of all, it must be rejected for the same reasons as those mentioned in paragraph 308 above in relation to KPI-22. In addition, the applicants merely assert that their tender included superior quality strategies to address any such situation, ensuring that the PO would never encounter any problems in the event that any incident should materialise. Finally, it should be noted that, on the basis of the example of the applicants and a team of 10 people, a replacement of '1.3 persons' per half year, amounting to '2.6 persons' over the course of a year, is a level of rotation that may be significant.
- 311 In the third place, in the reply, the applicants state that when the evaluation committee evaluated the KPI in the bid submitted for lot 1, it did not make any comments on KPI-31, although it was identical to the KPI-31 mentioned in their bid for the present lot, which

highlights the inconsistency of the evaluation.

312 The evaluation committee's negative comment, disputed by the applicants, states the following: 'Limited KPI-31'. It should be noted that, as correctly pointed out by the Commission, that complaint was raised for the first time in the reply, without it being based on any evidence disclosed during the proceedings, and is, as a result, inadmissible under Article 48(2) of the Rules of Procedure of 2 May 1991.

313 In view of all the foregoing, the applicants' complaints on the evaluation of tenders in the light of criterion 3.5 must be rejected, and accordingly, all of their complaints concerning lot 3 must be dismissed.

c) Lot 4

Criterion 4.1 entitled 'Overall quality of the presentation of the tenderer's response'

– The applicants' bid

314 According to the applicants, the evaluation committee accepted that it had misinterpreted the essence of criterion 4.1. The approach taken by the evaluation committee was therefore tainted from the beginning by a manifest error of assessment; it was clearly apparent from that approach that the evaluation committee had distorted that criterion.

315 In that regard, it should be noted that the evaluation committee did not acknowledge having misinterpreted the essence of criterion 4.1 and that the applicants' argument is identical to that raised in respect of that criterion as part of the first plea which was rejected (see paragraph 81 above).

– Novitech and Logica's bids

316 In the first place, the applicants indicate that, with respect to Novitech's bid, the evaluation committee noted that it was 'very readable, clear and coherent', although it indicated that it contained 'barely readable' graphical elements and 'broken internal references'. Consequently, the award of 4.5 out of 5 points to Novitech's bid under criterion 4.1 shows a manifest error of assessment and discrimination.

317 It must be stated that the applicants do not explain how the assessment in question shows discrimination. Furthermore, it must be observed that even if the evaluation committee noted that a graphic was barely readable and that internal references were broken, it made mostly positive comments. The evaluation committee therefore did not make a serious and manifest error in holding that Novitech's bid was generally very readable, clear and coherent, without however giving it full marks.

318 In the second place, the applicants argue that, with regard to Logica's bid, the evaluation committee mentioned that that bid included 'errors in links between the text and graphs'. Those errors certainly hindered the clarity and readability of the documents presented. The evaluation committee nevertheless claimed that that bid was 'very readable, clear and coherent', awarding it 4.5 points out of 5.

319 It should be noted that the evaluation committee made mostly positive comments but also noted the errors mentioned by the applicants. That helps to understand why it found Logica's bid to be generally very readable, clear and coherent, without giving it the maximum score.

320 Consequently, the applicants have not shown that the evaluation committee made a serious and manifest error of assessment in the evaluation of the tenders in the light of criterion 4.1.

Criterion 4.2 entitled ‘Tenderer’s approach to the quality assurance and to project management to be used during the execution of the contract’

– The applicants’ bid

321 According to the applicants, in the first place, the evaluation committee declared that Section 1.7 of the part of their bid, entitled ‘Tenderer’s approach to quality assurance and to project management’, revealed that with respect to quality assurance, their proposal ‘[was] not always tailored to the project management contract’. They submit that the evaluation committee ignored the tender specifications and misinterpreted their bid, thus making a manifest error of assessment. That section presented their approach with respect to the ‘[i]mprovement of software quality deliverables’, which is closely linked to the services requested. According to the applicants, the present lot, as it was presented in the tender specifications, related to the provision of ‘[c]onsultancy and assistance services regarding management of information technology projects’ and its ‘purpose [was] to deliver consultancy and assistance services to the [PO] regarding management of information technology projects’; ‘other related services that could be requested [were] studies and analysis, support, testing, elaboration of documentation, follow-up of deliverables and applications except financial and contractual information’.

322 It should be noted that, in the defence, the Commission made a clarification regarding the inadequacy of the applicants’ bid, which had been noted by the evaluation committee. It thus indicated that in that bid, the applicants had simply and exclusively referred to the tasks to be carried out by a development company, whereas they should have referred to the actions in the field of consultancy and assistance. In that regard, it must be held that, contrary to what the applicants allege, the Commission did not accept the existence of an error of assessment and that this is not a ‘new argument’ of the Commission, but additional information that it was entitled to provide (see paragraph 300 above).

323 In order to challenge the evaluation committee’s assessment, the applicants attempt to argue that the description of the quality assurance, in the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’, in Section 1.7, entitled ‘Improvement of software quality deliverables’, of that part, complied with the requirements and scope of the tender specifications for the present lot. It must be stated that the applicants merely assert that they set out their approach, without substantiating that allegation.

324 In addition, although the applicants state that they ‘covered all aspects’ of the tender specifications and criticise the Commission for failing to indicate what the missing element was, it must be held that it was not the absence of an element that the evaluation committee established, but the unsuitable nature of the proposal, in particular in Section 1.7 of the part of the applicants’ bid entitled ‘Tenderer’s approach to quality assurance and to project management’. Since the applicants do not provide any evidence making it possible to detect a serious and manifest error in the evaluation committee’s assessment, their argument must be dismissed.

325 In second place, the applicants submit that the evaluation committee made a manifest error of assessment in maintaining, without any basis, that, ‘even if an extensive list [was] provided, the [standards] for project management [were] only briefly described’. They claim to have analysed the requirements of the tender specifications, which in particular required the tenderers to provide ‘information on standards, software tools and methods

applied by the tenderer to manage projects — scope, risk, change, delivery, documentation, communication, time, cost management’, and to have presented the requested information in the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’.

326 It should be noted that the applicants merely assert that they analysed the requirements of the tender specifications and presented the requested information, but without substantiating their claim. It must be stated that, although the applicants’ bid contained a list of the standards and software used, in Section 2.1, entitled ‘Standards and software tools’, of the part of the bid entitled ‘Tenderer’s approach to quality assurance and to project management’, it is not obviously apparent, however, that Section 2 of that part contained a description of the standards referred to in relation to project management. The applicants do not provide any specific explanations in that regard. Accordingly, their argument does not make it possible to consider that the evaluation committee made a serious and manifest error of assessment in arguing that, ‘even if an extensive list [was] provided, the [standards] for project management [were] only briefly described’. It must therefore be rejected.

327 In the third place, the applicants dispute the evaluation committee’s negative comment relating to delivery management, stating that: ‘delivery management — general, without details “the tenderer [should] comply with the [PO]’s requirements, as stated in the tender specifications”’. They claim that their bid presented a detailed analysis of that aspect, as required by the tender specifications, with, for example, reference to delivery notes and approval procedures. The evaluation committee therefore made a manifest error of assessment.

328 It must be stated that, in Section 2.5 of the part of the applicants’ bid entitled ‘Tenderer’s approach to quality assurance and to project management’, relating to ‘delivery management’, to which the applicants refer, the description set out considerations which could be considered general and mentioned that ‘[t]he tenderer [should] comply with the [PO]’s requirements, as stated in the [tender specifications]’. Therefore, it is not apparent from the reading of that section that the evaluation committee’s comment is vitiated by a serious and manifest error of assessment. Accordingly, the applicants’ argument must be rejected.

329 In the fourth place, the applicants dispute the evaluation committee’s following negative comment: ‘risk management — general, without details (instead of the concrete information the tenderer makes a vague statement [that] “[t]his procedure [was] applied effectively in real projects”’.

330 First, the applicants argue that Section 2.3, entitled ‘Risk Management’, of the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’ presented concrete information about their approach in that regard. The applicants state that they set out, in particular, the steps followed for the management of risks, information about their approach to the calculation of risk priority, risk likelihood and impact, as well as information about the risk tracking tool and the reporting of risks. Second, given the limitations placed by the PO on the number of pages and characters, they claim to have submitted a full proposal, explicitly providing information on their approach to risk management in accordance with the tender specifications.

331 That line of argument does not hold.

332 It should be noted that the applicants’ bid, admittedly, did set out their approach to risk management in Section 2.3, entitled ‘Risk Management’, of the part of their bid entitled

‘Tenderer’s approach to quality assurance and to project management’. However, it was stated that the different stages of risk management were summarised. In addition, that presentation contained relatively general information, ending, as the evaluation committee noted in its comment, with the mere assertion that ‘[that] procedure [was] applied effectively in real projects’. Accordingly, it is not apparent from the content of that section that the evaluation committee made a serious and manifest error of assessment in that regard.

333 In addition, as regards the applicants’ argument concerning the limit on the number of pages and characters, it must be rejected. The same limit applied to all tenderers. Moreover, although, as the applicants point out, it was set by the tender specifications at a maximum of 3 000 characters, including spaces, per page, including headers and footers, it must be observed that the relevant page contained fewer than 2 700 characters, and the applicants could thus have added information had they wished to do so.

334 In the fifth place, according to the applicants, the evaluation committee incorrectly stated, with respect to the software tools that were to be used, that ‘only [the “JIRA” software had been] referred to’. The evaluation committee made a manifest error of assessment in that their bid proposed several other tools, such as ‘MS Project’ and ‘actiTIME’, as well as other support tools for the required tasks, such as ‘MS Visio (Process Modeller)’, ‘Rational System Architect’, ‘Rational Rose and Modeller’, and various testing tools including ‘JMeter, http_load’ and ‘MS Test Manager’.

335 In that regard, it should be noted that the software was listed in Section 2.1, entitled ‘Standards and software tools’, of the part of the applicants’ bid entitled ‘Tenderer’s approach to quality assurance and to project management’. Although, as maintained by the applicants and noted by the evaluation committee, the ‘JIRA’ software is referred to, on the other hand, none of the software referred to by the applicants in the application is. Moreover, the applicants merely state, without adding even a single reference to a paragraph of their bid, that they ‘mentioned individual tools under their right context, so that their utility and use is explained optimally in a [call for tenders] where answers were subject to strict page-limits’. Accordingly, inasmuch as only the ‘JIRA’ software was referred to in the part of the bid relating to ‘Standards and software tools’, the evaluation committee may not be criticised for having found that only the latter software was mentioned; accordingly, the applicants’ complaint must be dismissed as unfounded.

336 In the sixth place, the applicants dispute the committee’s negative comment relating to the approach they adopted in order to provide business analysis reports (functional and organisational specifications). They submit that the evaluation committee failed to provide any indication of what was allegedly missing or wrong in the proposed methodology, or to specify the PO’s requirements with respect to the link between the methodology and the standards to be followed for the management of the projects set out in Section 2.1 of the part of their bid entitled ‘Tenderer’s approach to quality assurance and to project management’.

337 It should be noted that, contrary to what the applicants claim, the evaluation committee did state which aspect it considered negative in their bid in that regard, namely the lack of a link between the proposed methodology and the standards indicated in Section 2.1 of the part of the bid relating to the ‘[t]enderer’s approach to quality assurance and to project management’. Furthermore, it should be noted that the applicants do not explain how the evaluation committee’s comment is wrong and to what extent the existence of such a link is irrelevant. The Commission does not accept, contrary to what the applicants submit, that the contested comment should be set aside. Accordingly, the applicants’ complaint must be rejected.

338 In the seventh place, the applicants claim that the evaluation committee's assessment that the proposed testing types did not include security testing is incorrect. Under the 'Prince II' method, user acceptance testing is based on a user acceptance test plan, which may vary from system to system, but which in general provides a realistic exposure of the system to all reasonably expected events and threats, and is, therefore, based upon the user requirements specification, including security requirements, with which the system must comply. The evaluation committee made a serious error of assessment by ignoring the fact that the testing of the security aspects was automatically part of the user acceptance testing and that there was no need to repeat it as an individual testing process. The same applies for factory acceptance testing. Both, factory acceptance testing and user acceptance testing use the security tools listed within the same section of the bid, namely 'WebScarab' and 'Microsoft Baseline Security Analyzer'.

339 It should be noted that, as regards the tests, Section 4, entitled 'Testing methods and tools', of the part of the applicants' bid relating to '[t]enderer's approach to quality assurance and to project management', contained no express reference to the 'Prince II' method which they mentioned.

340 Furthermore, it does not follow from the applicants' explanation regarding the user acceptance testing that the testing of the security aspects was automatically part thereof, or of the factory acceptance testing. First, the applicants' claims are not substantiated and, second, the applicants indicate that that testing was 'in general' part thereof, which implies that this is not necessarily the case.

341 Finally, the applicants state that they also indicated, in a table set out in Section 4.1 of the part of their bid entitled 'Tenderer's approach to quality assurance and to project management', 'various types of tools' which the applicants proposed to use for the 'various types of testing'. Besides the fact that the applicants' claims are vague, it must be held, as rightly observed by the Commission, that the fact that a tool is mentioned in a table does not compensate for the lack of description of the security testing in the very wording of the bid.

342 Accordingly, the applicants' complaint must be rejected.

– Logica and Novitech's bids

343 In the reply, the applicants indicate that, regarding the assessment of Logica and Novitech's bids with respect to delivery management, they refer to paragraph 24 of the reply. That argument must be rejected as inadmissible, inasmuch as paragraph 24 of the reply relates to another lot and another tenderer, namely, respectively, lot 1 and Sword-Siveco, and inasmuch as the essential points of law and of fact on which an action is based must, in accordance with Article 21 of the Statute of the Court of Justice and Article 44(1) (c) of the Rules of Procedure of 2 May 1991, be indicated, at least briefly, but coherently and intelligibly in the application itself; that interpretation of those provisions also applies to the conditions for the admissibility of a reply, which, under Article 47(1) of the Rules of Procedure, is intended to supplement the application (judgment of 14 November 2012 in *Nexans France and Nexans v Commission*, T-135/09, ECR, EU:T:2012:596, paragraph 113).

344 In view of all the foregoing, the complaints relating to the evaluation of the tenders in the light of criterion 4.2 must be rejected.

Criterion 4.3 entitled 'Technical merits of the human resources for the execution of the tasks'

- 345 According to the applicants, in the first place, the evaluation committee infringed the tender specifications and made a manifest error of assessment, because it held, incorrectly, that the proposed experts in their bid were not bilingual in English and French.
- 346 First, the applicants claim to have proposed the technical merits of the team tasked with the execution of the tasks set out in the contract in accordance with the tender specifications. The evaluation committee's negative comments disregarded the requirements of the specifications as well as Answer No 2 of Additional Information Nos 2 and 3 issued by the PO, according to which coverage in both English and French was to be evaluated, and not the capacity of the individual experts in the team and their CVs. Those CVs were evaluated during the selection phase; the evaluation committee was not entitled to evaluate them again during the award phase. In so doing, the Commission made a serious and manifest error, misunderstood the tender specifications and infringed Article 97 of the Financial Regulation, as interpreted in the judgment in *Lianakis and Others*, cited in paragraph 121 above (EU:C:2008:40).
- 347 Second, the applicants claim that the composition of the proposed team included a project manager who had knowledge of both English and French and that all the proposed human resources had excellent knowledge of English, in accordance with the tender specifications, as specified in Answer No 9 of Additional Information No 5 of the PO. In addition to fully meeting the requirements, their bid even offered significant added value, by making available bilingual experts who were able to cover two of the most widely used working languages of the PO, namely English and French.
- 348 That argument does not hold.
- 349 In that regard, it should be noted that the evaluation committee made the following negative comments: 'only 1 out of 3 [project managers] [had] a knowledge of [the] French language' and 'none of the 3 [technical consultants] [had] a French knowledge'.
- 350 First of all, it must be stated that the evaluation committee's comments are not incorrect. Contrary to what the applicants claim, they had not planned to make available bilingual experts able to cover two of the most widely used working languages of the PO, namely English and French, since only one of the three proposed project managers had knowledge of both languages.
- 351 Next, the applicants correctly submit that, by Answer No 9 of Additional Information No 5 of the PO, the tenderers were informed that the proposed human resources should have knowledge of at least one of the working languages of the PO. As correctly noted by the Commission, it was stated, in the same answer, that the tenderers were asked to 'note that the coverage of the working languages by the proposed human resources [would] be taken into account by the evaluation of the offers for criterion No 3'. By contrast, contrary to what the applicants claim, Answer No 2 of Additional Information No 2 of the PO did not relate to languages.
- 352 Therefore, while it is true that it was not a requirement that the proposed human resources be bilingual in English and French, it is also evident, contrary to what the applicants assert, that, when assessing the tenders in the light of criterion 4.3, knowledge of languages by the proposed team and coverage of available languages would be assessed by using the information provided on the proposed persons and that that assessment would necessarily include consideration of the level of stated language ability. Therefore, it was not a case of requirements which were not mentioned in the tender specifications.
- 353 Finally, for the same reasons as those stated in the examination of the comments disputed

by the applicants relating to their tender for lot 1, in the light of criterion 1.3 (see paragraphs 127 to 135 above), the applicants' arguments, in which they criticise the PO for having conflated the selection and award phases by evaluating the CVs of the members of the proposed team in both phases, must be rejected.

354 It follows that the evaluation committee was entitled to consider, without making a serious and manifest error, that the level of language ability stated in the applicants' bid could be noted and that, as correctly pointed out by the Commission, Novitech and Logica's bids presented better coverage of the two working languages of the PO by the proposed teams than that offered in the applicants' bid. The human resources that the applicants had proposed were, in fact, not bilingual, whereas, in the case of Novitech and Logica's bids, they were.

355 Furthermore, the applicants' argument that the evaluation committee's comment relating to the technical consultant profile clearly contradicted the requirements of the PO set out in the tender specifications must be rejected, given that that profile did not exist in the tender specifications relating to the present lot. It is sufficient to note that, whereas, for the present lot, an IT consultant had been provided for, and not a technical consultant, as for lots 1 and 3, the nature of the tasks assigned to them was identical, contrary to what the applicants claim. In those circumstances, the use of one term instead of another, having regard, moreover, to a comment relating to the languages mastered in respect of which the tender specifications did not make a distinction in relation to the different lots or profiles, does not constitute a serious and manifest error of assessment by the evaluation committee in that regard.

356 Accordingly, the applicants' arguments must be rejected.

357 In the second place, the applicants dispute the evaluation committee's comment relating to the alleged 'limited external certifications' of the human resources that they proposed, inasmuch as the tender specifications did not include any requirements in terms of certifications, let alone 'external certifications'. They refer to Answer No 2 of Additional Information No 3 issued by the PO, which stated that 'the human resources [would be] evaluated against the nature of the tasks described in Annex 9 for each of the profiles', and that 'there [were] no pre-defined requirements for each of the profiles, except that all the proposed human resources [were] required to have a university degree [of] at least three (3) years in the relevant subject and a minimum of three (3) years of the relevant professional experience'. The applicants state that they proposed, in that context, highly qualified experts, who attended in-house and external training and who were awarded the relevant certifications. The evaluation committee therefore disregarded the tender specifications and penalised the applicants' bid on the basis of unfounded assumptions, which shows the existence of a serious and manifest error of assessment.

358 It must be held, as submitted by the Commission, that although external certifications were not required, the award thereof could be considered by the evaluation committee, in the context of a comparison of the tenders, to be a useful proxy in determining the quality of the proposed human resources. Human resources which had been awarded external certifications were proposed by Novitech and Logica.

359 Moreover, to the extent that the applicants intend to challenge the taking into account of past experience during the award phase, it should be recalled that a criterion based on the technical merits and professional experience of the members of the team proposed by a tenderer for the execution of a framework contract may, in some situations, constitute an award criterion within the meaning of Article 138 of the implementing rules (see paragraphs 130 to 134 above). It must be held that the purpose of the review of the

experience carried out by the PO in the context of the award phase was to identify the tender that was economically the most advantageous. It was designed to assess the technical competence of the teams proposed by the various tenders in order to be able to compare their economic value, as provided for in Article 138 of the implementing rules.

360 Moreover, the applicants' argument is inherently contradictory, in that they submit that the contracting authority 'has to base this on the actual level of each expert and not his past experience'. The 'actual level' of each expert is dependent in particular on past experience.

361 Accordingly, the applicants' argument must be rejected as unfounded.

362 In the third place, the applicants argue that the evaluation committee incorrectly asserted that 'point 1.1 (nature of tasks per profile) [did] not [provide] any added value, as its [repeated] information to be found in Annex 9 of the [tender] specifications'. According to them, since their bid did not repeat that information, that element did not constitute an argument justifying the deduction of points. Contrary to the evaluation committee's claim, the alleged repetition explained how the proposed human resources met the requirements of the PO and what roles and responsibilities they took on, in order to comply with the nature of the tasks per profile presented in Annex 9 to the tender specifications. In order to do so, the applicants submit that they used some words, text or terms when they deemed it necessary to do so.

363 In that regard, it must be stated that Section 1.1 of the part of the applicants' bid relating to the '[t]echnical merits of the human resources for the execution of tasks' included Sections 1.1.1 and 1.1.2, describing, respectively, the nature of the tasks of the project manager and IT consultant, which merely repeated the information contained in Annex 9 to the tender specifications. Therefore, the applicants' complaint must be rejected.

364 In the fourth place, the applicants allege that the evaluation committee claimed, incorrectly, with respect to the professional experience of the proposed human resources that 'various projects [were] presented but [that] no information what was the role of the proposed person in the given project and what technologies were used by the proposed person' was provided. They refer to Section 1.3 of the part of their bid entitled 'Technical merits of the human resources for the execution of the tasks', in which the role of the person in the various projects in which he was involved, as well as the technologies that the person used, were presented.

365 It is appropriate, first, to dismiss the applicants' argument that if the evaluation committee had found that some items were unclear or missing, it should have indicated as much, so that the applicants could understand the reason why their bid was rejected. It must be stated that the committee clearly stated what it found to be lacking in the applicants' bid as noted by the applicants themselves. Accordingly, that argument has no factual basis.

366 It should next be noted that the applicants mentioned, in Section 1.3 of the part of their bid entitled 'Technical merits of the human resources for the execution of the tasks', to which they refer, under the heading 'Professional experience', projects in which the proposed persons took part and the technologies used, but it is not possible to state that the person concerned had specifically used those technologies, rather than they were generally used in the context of the projects referred to. Moreover, for the proposed persons, the general function in the projects was mentioned, but no indication as to their exact role in the performance of the mentioned projects was given. Furthermore, in the subsection of the bid relating to experience in the tasks, such as those set out in Annex 9 to the tender specifications, the information given for each of the proposed persons was set out in detail for the proposed project managers, although it was not possible to link that information to a

particular project, and the information provided in the description of the proposed IT consultants was very general.

367 Finally, the applicants' argument that the examination of the experience within the context of an award criterion is contrary to Article 97 of the Financial Regulation, as interpreted by the Court of Justice in the judgment in *Lianakis and Others*, cited in paragraph 121 above (EU:C:2008:40), must be rejected on the same grounds as those set out in paragraphs 128 and 359 above.

368 Accordingly, the applicants have not shown that the evaluation committee's comment was vitiated by a serious and manifest error of assessment. Therefore, the applicants' complaint must be rejected.

369 In the fifth place, the applicants challenge the evaluation committee's comment that the applicants' bid provided 'no information [on] how long the proposed human resources [had been] working for the tenderer'. That claim is alleged to be incorrect, irrelevant and unfounded. The evaluation committee made a manifest error of assessment by disregarding the tender specifications, which did not require such information. The applicants also refer to Additional Information No 3 issued by the PO. Consequently, taking account of the requirements of the PO and the strict limits on the number of pages and characters imposed by the tender specifications, they were forced to make a bid which did not include any additional requirements to those set out in the tender specifications.

370 In the reply, the applicants claim that, in the defence, the Commission did not comment on the statement that the evaluation committee had thus introduced a criterion of which the tenderers were not aware. The Commission is alleged, however, to have attempted to remedy that impropriety by observing that the application of that improper criterion had not had a significant impact on the score awarded. The applicants submit that if it is true that that statement had had no impact on the assessment, which they dispute, it proves that the Commission's reasoning is, in any event, flawed.

371 The applicants' argument must be rejected. First, it must be stated that, contrary to what the applicants claim, the disputed comment is not incorrect inasmuch as, in their bid, there is no information on how long the proposed human resources had been working with the tenderer. That complaint is therefore factually inaccurate.

372 In addition, as argued by the applicants, according to Section 2.7.1 of the tender specifications, the tenderers were required to provide 'a document ... presenting [the] technical merits of the proposed human resources for the execution of tasks, including information on the persons assigned to fulfil the particular roles'. Accordingly, although the tender specifications did not expressly require the tenderer to provide information on how long the proposed human resources had been working with it, the evaluation committee did not, however, misapply the tender specifications, since they required 'information on the persons assigned to fulfil the particular roles', which could include how long those persons had worked with the tenderer.

373 Moreover, as noted by the applicants, it is true that Answer No 2 of Additional Information No 3 issued by the PO stated that the tenderers were required to present the technical merits of the human resources which they were proposing for each profile mentioned in Annex 9 to the tender specifications and to explain how their proposal covered the PO requirements with respect to the nature of the tasks envisaged for the supply of services, the required academic background and number of years of relevant professional experience. Also, as noted by the applicants, that response expressly stated that 'the human resources [would] be evaluated against the nature of the tasks described in Annex 9 for each of the profiles' and

that ‘[there] [were] no pre-defined requirements for each of the profiles, except that all the proposed human resources [were] required to have a university degree [of] at least three (3) years in the relevant subject and a minimum of three (3) years of relevant professional experience’.

374 None the less, it must be held that the reference to how long the proposed experts had been working with the tenderer could be relevant for the purposes of evaluating the bids in so far as it made it possible to perceive how the tenderer was in fact able to gauge the proposed persons’ experience and the stability of the proposed personnel. Contrary to what the applicants claim, that information required the use of few characters only. Moreover, given the score awarded to the applicants’ bid, which was 33 points out of 40, and the other negative comments made about that bid, and given the score awarded to Novitech’s bid, which was 30 points out of 40, which received fewer negative comments and more positive comments than the applicants’ bid, it cannot be excluded, as correctly pointed out by the Commission, that that comment did not have a significant impact on the score awarded for that criterion. Although the applicants put forward a different opinion, they do not submit any evidence supporting their claim; the statement of reasons for the decision ranking their bid must be considered sufficient in that regard.

375 Finally, although the applicants allege that the ‘motivation of the [Commission] [set out in the defence] is ... deficient’, they do not expound any arguments in that regard. Accordingly, that argument is inadmissible.

376 In view of all the foregoing, the complaints concerning the evaluation of the tenders in the light of criterion 4.3 cannot be upheld and, accordingly, all the complaints concerning lot 4 must be rejected.

377 Since the applicants have been unsuccessful in all their pleas in law relating to annulment, this action must be dismissed in so far as it seeks the annulment of the decision to rank the applicants’ bids in the third place in the cascade for lot 1, in the third place in the cascade for lot 4 and in the second place in the cascade for lot 3.

378 With respect to the action for annulment of the decisions awarding the contracts at issue to the other successful tenderers in so far as they relate to their ranking, it must be rejected following the dismissal of the action for annulment of the decisions mentioned in paragraph 377 above, to which they are closely connected (see, by analogy, judgments of 18 April 2007 in *Deloitte Business Advisory v Commission*, T-195/05, ECR, EU:T:2007:107, paragraph 113, and 10 October 2012 in *Evropaiki Dynamiki v Commission*, T-247/09, EU:T:2012:533, paragraph 170).

II – The claim for damages

379 The applicants seek damages in the amount of EUR 280 000 to compensate for loss of opportunity and harm caused to their reputation and credibility (see paragraphs 21 and 24 above). They base their claim on Articles 256 TFEU, 268 TFEU and 340 TFEU.

380 The Commission challenges the admissibility of the applicants’ claim for damages and, in any event, its merits.

381 Under the second paragraph of Article 340 TFEU, the European Union must, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

- 382 In accordance with settled case-law, for the European Union to incur non-contractual liability under the second paragraph of Article 340 TFEU 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 (judgment of 29 September 1982 in *Oleifici Mediterranei v EEC*, 26/81, ECR, EU:C:1982:318, paragraph 16; see, also, judgment in *Evropaïki Dynamiki v Commission*, cited in paragraph 37 above, EU:T:2008:484, paragraph 133 and the case-law cited). If any of those conditions is not satisfied, the application must be dismissed in its entirety without it being necessary to examine the other conditions (judgments of 15 September 1994 in *KYDEP v Council and Commission*, C-146/91, ECR, EU:C:1994:329, paragraphs 19 and 81, and in *Evropaïki Dynamiki v Commission*, cited in paragraph 33 above, EU:T:2011:731, paragraph 121).
- 383 In the present case, the claim for damages is based on the same unlawful acts as those relied on in support of the action for annulment. As is apparent from the considerations relating to the action for annulment (see paragraphs 377 and 378 above), the existence of those unlawful acts is not demonstrated in the present case.
- 384 Consequently, since the condition relating to the unlawfulness of the conduct of which the PO is accused is not fulfilled, that finding is sufficient, in the present case, to dismiss the claim for damages as unfounded, without it being necessary to examine its admissibility or the other conditions for non-contractual liability to be incurred, or to grant the applicants' request that the Court invite the Commission to provide 'the relevant documents and information that it alone possesses', so that the applicants can estimate the exact amount of the alleged damage.
- 385 It follows from all of the foregoing considerations that the action must be rejected in its entirety.

Costs

- 386 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.
- 387 In the present case, as the applicants have been unsuccessful, they must be ordered to pay the costs, in accordance with the form of order sought by the Commission.
- 388 The applicants nevertheless request that the Court order the Commission to pay the applicants' legal costs even if the Court rejects the application. In essence, they submit that the incorrect assessment of their bids by the PO, the failure to state reasons and the fact that the PO and the Commission did not send them the evaluation committee's report forced them to commence the present proceedings.
- 389 The Commission disputes the arguments put forward by the applicants.
- 390 In accordance with Article 135(2) of the Rules of Procedure, the Court may order a party, even if successful, to pay to the other party costs which it has caused that party to incur and which the Court considers unreasonable or vexatious.
- 391 According to the case-law, that provision should be applied where the dispute is in part attributable to the conduct of an EU institution (judgments of 19 March 1997 in *Oliveira v Commission*, T-73/95, ECR, EU:T:1997:39, paragraphs 51 and 52, and 14 July 1997 in

Interhotel v Commission, T-81/95, ECR, EU:T:1997:117, paragraphs 81 and 82).

392 In the present case, the examination of the conduct of the PO and the Commission in respect of the applicant does not warrant the Commission being ordered to pay the costs under Article 135(2) of the Rules of Procedure.

393 It should be borne in mind that the examination of the assessment of the bids carried out by the PO has not revealed any manifest errors of assessment of the applicants' bids. In addition, the PO, having provided all the information it was required to provide by Article 100(2) of the Financial Regulation, did not breach its obligation to state reasons. Similarly, under that provision, the PO and the Commission were not forced, contrary to what the applicants submit, to provide a complete copy of the evaluation reports.

394 In those circumstances, the Court finds that the dispute is not attributable to the conduct of the PO and the Commission, which complied with European legislation, with the result that the applicants were not forced to bring proceedings before the Court (judgment of 19 April 2012 in *Evropaïki Dynamiki v Commission*, T-49/09, EU:T:2012:186, paragraph 139).

395 Accordingly, the applicants' complaint must be rejected.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders European Dynamics Luxembourg SA, European Dynamics Belgium SA and Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.**

Czúcz

Pelikánová

Popescu

Delivered in open court in Luxembourg on 8 July 2015.

[Signatures]

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* Language of the case: English.

1 This judgment is published in extract form.