

JUDGMENT OF THE GENERAL COURT (Ninth Chamber)

10 June 2026 (*)

(Public service contracts – Tendering procedure – Development, implementation, maintenance/operations, advice and consultancy services in accounting/finance and financial IT systems – Cancellation of the procurement procedure – Obligation to state reasons – Manifest error of assessment – Legal certainty – Legitimate expectations)

In Case T-80/25,

Xpand Consortium, established in Brussels (Belgium),

NTT Data Belgique, established in Brussels,

Sopra Steria Benelux, established in Ixelles (Belgium),

Fujitsu Technology Solutions, established in Brussels,

represented by M. Troncoso Ferrer and L. Lence de Frutos, lawyers,

applicants,

v

European Commission, represented by S. Romoli and T. Van Noyen, acting as Agents,

defendant,

supported by

Arhs developments SA, established in Belvaux (Luxembourg), represented by P. Teerlinck, M.-R. Gherghinaru, L. Panepinto and Z. Irusta Ortega, lawyers,

intervener,

THE GENERAL COURT (Ninth Chamber),

composed of S. Kingston, President, A. Marcoulli and P. Zilgalvis (Rapporteur), Judges,

Registrar: A. Audras-Hidelot, Administrator,

having regard to the written part of the procedure,

further to the hearing on 28 January 2026,

gives the following

Judgment

- 1 By their action under Article 263 TFEU, the applicants, Xpand Consortium, NTT Data Belgique, Sopra Steria Benelux and Fujitsu Technology Solutions, seek the annulment of Commission Decision Ares (2024) 8222107 of 19 November 2024, by which the European Commission cancelled the procurement procedure relating to call for tenders BUDG 19/PO/04 ('the contested decision'), pursuant to Article 174 of Regulation (EU, Euratom) 2024/2509 of the European Parliament and of the Council

of 23 September 2024 on the financial rules applicable to the general budget of the Union (OJ L, 2024/2509; ‘the 2024 Financial Regulation’), in so far as that decision concerns Lot No 2.

Background to the dispute

- 2 On 25 November 2020, by a contract notice published in the supplement to the *Official Journal of the European Union* (OJ 2020/S, 230-565743), the Commission issued the call for tenders bearing the reference BUDG 19/PO/04 relating to the provision of ‘development, implementation, maintenance/operations, advice and consultancy services in accounting/finance and financial IT systems’.
- 3 The call for tenders was divided into two lots. Lot No 2, entitled ‘IT SAP’, pertained to the delivery of services in the areas of the development and operations of financial and/or accounting information technology systems to the contracting authorities in various IT technologies. The value of Lot No 2 was estimated at EUR 545 million excluding value added tax (VAT) over four years.
- 4 The call for tenders for Lot No 2 sought to conclude multiple, separate but identical framework service contracts, in a ‘cascade’ fashion, with a maximum of three economic operators.
- 5 NTT Data Belgique, Sopra Steria Benelux and Fujitsu Technology Solutions are companies operating in the accounting and financial IT systems services sector.
- 6 The consortium called Xpand Consortium, an applicant in the same way as those three companies of which it is composed, had submitted a tender for Lot No 2 on 26 January 2021.
- 7 On 11 February 2022, by the notification letter bearing the reference Ares(2022) 1027331, the Commission informed the applicants that their tender had been accepted.
- 8 On 3 March 2022, the Commission adopted Decision Ares(2022) 1579941, by which it cancelled the procurement procedure relating to the call for tenders BUDG 19/PO/04, for both Lot Nos 1 and 2, pursuant to Article 171 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1; ‘the 2018 Financial Regulation’) on account of the non-compliance of certain selection criteria with that financial regulation (‘the initial decision’).
- 9 By letter of the same date bearing the reference Ares(2022) 1582755, the Commission informed the applicants that, following comments made by an unsuccessful tenderer, the contracting authority had identified errors in the procurement documents and, in particular, the non-compliance of certain selection criteria with the 2018 Financial Regulation and that, consequently, it had decided to cancel the procurement procedure for both lots.
- 10 By letter dated 8 March 2022, the applicants requested additional information concerning, inter alia, the facts which had led to the cancellation of the procurement procedure in question.
- 11 On 8 April 2022, by letter bearing the reference Ares(2022) 2750601, the Commission communicated the initial decision to the applicants and provided them with additional explanations as to the reasons for the cancellation of the procurement procedure in question. In that letter, the Commission stated that the contracting authority had reassessed the technical specifications and had reached the conclusion that the service level agreement could not be classified as a minimum selection criterion concerning the tenderers’ technical and professional capacity, within the meaning of point 20 of Annex I to the 2018 Financial Regulation; this was because the information requested from the tenderers in the service level agreement was, for some parts, covered by the technical tender and should, therefore, have been evaluated in the light of the technical award criteria and, for other parts, corresponded to the conditions for the performance of the contract, which were not linked to any minimum level of capacity under the selection criteria.

- 12 By judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), the General Court annulled the initial decision, in so far as it concerned Lot No 2, on the basis of the plea, raised of its own motion, alleging an inadequate statement of reasons.
- 13 On 19 November 2024, the Commission adopted the contested decision, by which it cancelled the procurement procedure relating to the call for tenders BUDG 19/PO/04 for both Lot Nos 1 and 2. According to recitals 1 and 2 of that decision, that latter was intended to remedy the failure to state reasons for the initial decision which the Court had found in the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724).

Forms of order sought

- 14 The applicants claim that the Court should:
- annul the contested decision in so far as it concerns Lot No 2;
 - order the Commission and the intervener, Arhs developments SA, to pay the costs.
- 15 The Commission contends that the Court should:
- dismiss the action;
 - order the applicants to pay the costs.
- 16 The intervener claims that the Court should:
- dismiss the action;
 - order the applicants to pay the costs.

Law

- 17 The applicants put forward four pleas in law in support of their action. The first plea alleges infringement of the obligation to state reasons and a manifest error of assessment. The second plea alleges breach of the principles of legal certainty and protection of legitimate expectations. The third plea alleges breach of the principle of good administration. The fourth plea alleges breach of the principles of proportionality and equal treatment.

The law applicable ratione temporis

- 18 According to settled case-law, procedural rules are generally taken to apply from the date on which they enter into force, as opposed to substantive rules, which are usually interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, their objectives or their general scheme that such an effect must be given to them (see judgment of 26 March 2015, *Commission v Moravia Gas Storage*, C-596/13 P, EU:C:2015:203, paragraph 33 and the case-law cited).
- 19 In view of the date on which the call for tenders was issued, namely 25 November 2020, the facts of the present case are governed by the substantive provisions of the 2018 Financial Regulation. In addition, the contested decision was adopted on 19 November 2024, that is, after the entry into force of the 2024 Financial Regulation. Thus, in so far as, as stated in paragraph 18 above, procedural rules are generally taken to apply from the date on which they enter into force, the dispute is governed by the procedural provisions of the 2024 Financial Regulation, including the procedural provisions of Article 174 of that regulation.
- 20 Moreover, it should be noted that the differences between, on the one hand, Article 174 of the 2024 Financial Regulation and, on the other hand, the equivalent provision of the 2018 Financial Regulation,

namely Article 171 of the latter regulation, are not relevant to the present dispute.

The first plea in law, alleging infringement of the obligation to state reasons and a manifest error of assessment

- 21 The arguments in support of this plea are divided into two parts: the first part alleges infringement of the obligation to state reasons and the second part alleges a manifest error of assessment.

The first part, alleging infringement of the obligation to state reasons

- 22 The applicants submit that the Commission cannot, at this stage of the proceedings, adopt the contested decision in order to resolve *ex post* the defect in the initial decision which led to its invalidity. Thus, the failure to state reasons found by the Court in the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), cannot be remedied a posteriori.
- 23 Moreover, in the applicants' view, the reasoning in the contested decision still does not comply with the requirements of Article 296 TFEU. As regards the context of that decision, the latter is subsequent to a procurement procedure during which the Commission maintained its position that the service level agreement was a selection criterion and not an award criterion, but then radically changed its mind. Therefore, the applicants argue, the Commission should have given a more detailed statement of reasons. However, the Commission did not provide any explanation concerning, first, the reasons why it decided to change its mind and, second, the reasons why the explanations which it had provided during the exchanges of questions and answers were no longer valid.
- 24 More specifically, the Commission did not explain (i) which elements of the service level agreement related more to the performance of the contract and why they were not linked to the contractor's general capacity to provide the service concerned by the procurement procedure, or (ii) which criteria related more to the technical evaluation of the tender and had to be regarded as award criteria.
- 25 Lastly, the applicants submit that the Commission stated, in the contested decision, that it had identified 'errors' in certain selection criteria, but it did not explain the various errors that were allegedly made, and referred only to the choice of the service level agreement as a selection criterion.
- 26 The Commission and the intervener dispute that line of argument.
- 27 In the first place, it should be recalled that, under the first paragraph of Article 266 TFEU, the institution, body, office or agency whose act has been declared void or whose failure to act has been declared contrary to the Treaties is required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.
- 28 However, Article 266 TFEU requires the institution which adopted the annulled measure only to take the necessary measures to comply with the judgment annulling its measure. Accordingly, that provision requires the institution concerned to ensure that any act intended to replace the annulled act is not affected by the same irregularities as those identified in that judgment. However, that institution cannot be required to take a fresh position on aspects of its decision which were not called into question by that judgment (see judgment of 6 September 2023, *Sopra Steria Benelux and Unisys Belgium v Commission*, T-108/22, not published, EU:T:2023:495, paragraph 37 and the case-law cited).
- 29 It should also be noted that, in the context of the implementation of a judgment annulling a decision on the ground of a formal defect, it has been held that, in order to comply with such a judgment and to implement it fully, the institution concerned was required to have regard not only to the operative part of that judgment but also to the grounds which led to the judgment and constitute the essential basis for it, in so far as they were necessary to determine the exact meaning of what is stated in the operative part. It is those grounds which, on the one hand, identify the illegality and, on the other, indicate the specific reasons which underlie the finding of illegality set out in the operative part and which the institution concerned must take into account when replacing the act annulled or declared invalid. Consequently, except where the irregularity found rendered the entire administrative procedure null and void, that institution may, in order to adopt an act intended to replace a preceding act annulled or

declared invalid, reopen the procedure at the stage at which that irregularity was committed (see judgment of 6 September 2023, *Sopra Steria Benelux and Unisys Belgium v Commission*, T-108/22, not published, EU:T:2023:495, paragraph 38 and the case-law cited).

- 30 The institutions thus have broad discretion to decide the measures to put into effect in order to give due effect to an annulling judgment, it being understood that the measures must be compatible with the operative part of the judgment in question and the grounds constituting its essential basis (see judgment of 6 September 2023, *Sopra Steria Benelux and Unisys Belgium v Commission*, T-108/22, not published, EU:T:2023:495, paragraph 39 and the case-law cited).
- 31 Furthermore, according to settled case-law, where a measure adopted by an EU institution has been annulled for formal or substantive defects, that institution is entitled to adopt afresh an identical measure, this time observing the formal rules and ensuring that the new measure is not vitiated by the same substantive defect (see order of 16 July 2015, *National Iranian Tanker Company v Council*, T-207/15 R, EU:T:2015:535, paragraph 39 and the case-law cited).
- 32 In the present case, the initial decision was annulled on account of a formal defect, namely an inadequate statement of reasons, by the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), as stated in paragraph 12 above.
- 33 First of all, in paragraph 53 of the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), the Court recalled that, in the initial decision, it was stated that, following comments made by an unsuccessful tenderer, the contracting authority identified errors in the procurement documents and, in particular, the non-compliance of certain selection criteria with the 2018 Financial Regulation.
- 34 Next, in paragraph 54 of the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), the Court indicated that the statement of reasons for the initial decision, based on the non-compliance of certain selection criteria with the 2018 Financial Regulation, did not make it possible to determine which criteria were not considered to be compliant, nor which provisions of that regulation were not complied with. In addition, in paragraph 55 of that judgment, the Court pointed out that the statement of reasons for the initial decision also could not be inferred from the context in which that decision was adopted, since the applicants were not aware of the comments made by the unsuccessful tenderer.
- 35 Lastly, in paragraphs 56 and 57 of the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), the Court concluded that the initial decision did not set out in a clear and unequivocal fashion the reasoning followed by the institution. It was on that basis that it annulled the initial decision on the ground that the statement of reasons was inadequate, without examining the other arguments put forward by the applicants.
- 36 Accordingly, it must be held that, since the initial decision was annulled on account of a formal defect resulting from an inadequate statement of reasons, there was nothing to prevent the Commission from adopting, in accordance with the case-law cited in paragraphs 28 to 31 above, a new decision, this time complying with the formal rules.
- 37 That finding is not called into question by the applicants' argument that the illegality found by the Court in the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), cannot be 'regularised' a posteriori.
- 38 That argument is based on a misunderstanding of the contested decision. Article 264 TFEU provides that, if the action is well founded, the contested act is to be declared void. Accordingly, the contested decision does not 'regularise' the initial decision, which was declared void on account of the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724). It is a new decision cancelling the procurement procedure concerned; the adequacy of the statement of reasons for that decision must be assessed independently of the statement of reasons for the initial decision.

- 39 As regards the alleged failure to state reasons for the contested decision, it should be recalled that, according to settled case-law, the statement of reasons required by Article 296 TFEU must disclose in a clear and unequivocal fashion the reasoning followed by the institution which adopted the measure in such a way as to enable the person concerned to ascertain the reasons for the measure and to enable the court having jurisdiction to exercise its power of review (see judgment of 22 April 2021, *Council v PKK*, C-46/19 P, EU:C:2021:316, paragraph 47 and the case-law cited).
- 40 That requirement to state reasons is given specific expression in Article 174 of the 2024 Financial Regulation, which provides, inter alia, that the contracting authority may, before the contract is signed, decide to cancel the procurement procedure, by way of a reasoned decision.
- 41 Furthermore, 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. It is not necessary for the reasoning to specify all the relevant facts and points of law, since the question whether the statement of reasons meets the requirements of the second paragraph of Article 296 TFEU must be assessed with regard not only to its wording but also to its context and to all the legal rules governing the matter in question (see judgment of 23 November 2023, *Ryanair v Commission*, C-210/21 P, EU:C:2023:908, paragraph 105 and the case-law cited; judgment of 23 January 2025, *Neos v Ryanair and Commission*, C-490/23 P, EU:C:2025:32, paragraph 34).
- 42 In order to remedy the defects of the initial decision, detailed in paragraphs 33 to 35 above, first, the Commission states in the contested decision that the contracting authority had identified errors in the procurement documents and, in particular, the non-compliance of certain selection criteria with the 2018 Financial Regulation, in particular section 3.2.3.3 of the tender specifications and in Annex 16 relating to the service level agreement, and that those errors could not be corrected after the deadline for submission of tenders.
- 43 Second, the contested decision states that tenderers were requested to submit a service level agreement using the template provided in Annex 16. Section 3.2.3.3 of the tender specifications and the preamble to that annex provided that the completed agreement would be assessed in the light of the selection criteria relating to technical and professional capacity.
- 44 Third, the Commission stated that the service level agreement could not qualify as a minimum selection criteria concerning technical and professional capacity or as evidence to be provided by an economic operator to demonstrate its technical and professional capacity, within the meaning of point 20 of Annex I to the 2018 Financial Regulation. In that agreement, the requested information was, for some parts, pertaining to the technical offer and should have thus been assessed under the technical award criteria, and, for other parts, corresponded to conditions for contract performance, which were not linked to any minimum technical and professional capacity level under the selection criteria.
- 45 Consequently, the contested decision specifies, as required by the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724, paragraph 54), the criteria which were not considered to comply with the 2018 Financial Regulation and the provisions of that regulation which were not adhered to. It also indicates the context in which that decision was adopted, namely the discovery, in the procurement documents, of errors which could not be regularised. That information is such as to enable the applicants to understand the reasons for the evolution of the Commission's position and for the lack of an alternative to the cancellation of the procurement procedure.
- 46 Thus, it is apparent from the contested decision that the Commission set out, in a sufficiently detailed and comprehensive manner, the reasons why it adopted that decision. The applicants have not specified how those explanations are insufficient to understand the reasons which led the Commission to adopt such a decision and which enabled the Court to exercise its power of review.
- 47 Consequently, the contested decision contains a sufficient statement of reasons.

48 As regards the applicants' line of argument relating to a failure to observe the principle of proportionality, it will be examined in the context of the fourth plea, which alleges breach of the principles of proportionality and equal treatment.

49 In the light of the foregoing, the first part of the first plea must be rejected as unfounded.

The second part, alleging a manifest error of assessment

50 The applicants submit, in essence, that the Commission made a manifest error of assessment in taking the view in the contested decision that the service level agreement could not constitute a minimum selection criterion.

51 In particular, the applicants argue that, since the case-law grants contracting authorities a broad discretion throughout the procurement procedure, including as regards the choice and evaluation of the selection and award criteria, nothing prevents the Commission from defining the service level agreement as a selection criterion.

52 In that regard, the selection criteria are, according to the applicants, aimed at verifying the tenderers' capacity to perform the contract, whereas the award criteria are aimed at determining the most economically advantageous tender after comparing the different bids.

53 However, the applicants submit, the Commission now asserts that the service level agreement is an award criterion because it relates to the technical aspects of the tender, without explaining how the service level agreement should enable the contracting authority to compare the tenders submitted by the tenderers and to evaluate the most economically advantageous tender. That, the applicants state, contrasts with the Commission's previous position in the questions and answers phase, namely that the service level agreement was a selection criterion.

54 Furthermore, they argue, to regard the service level agreement as an award criterion could have involved the comparison of heterogeneous quality indicators, which the Commission considered to be an unreliable methodology, and which it therefore deliberately avoided.

55 Accordingly, the applicants submit that the Commission made a manifest error of assessment, first, in asserting that certain errors were identified following the comments made by an unsuccessful tenderer during the standstill period, even though those errors had, in reality, already been identified during the questions and answers phase; second, by suddenly changing the position which it had maintained throughout the procurement procedure; and, third, by adopting the contested decision, with a manifest failure to state reasons.

56 The Commission and the intervener dispute that line of argument.

57 First of all, it must be recalled that the legality of an EU measure must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (see judgments of 18 July 2013, *Schindler Holding and Others v Commission*, C-501/11 P, EU:C:2013:522, paragraph 31 and the case-law cited, and of 4 October 2024, *García Fernández and Others v Commission and SRB*, C-541/22 P, EU:C:2024:820, paragraph 327 and the case-law cited).

58 Furthermore, according to settled case-law, the adjudicating authority enjoys a broad margin of assessment 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 review by the General Court must be limited to checking compliance with the applicable procedural rules and with the duty to give reasons, the correctness of the facts found and that there is no manifest error of assessment or misuse of powers. The contracting authority is granted such a broad margin of assessment throughout the tendering procedure, including in relation to the choice and evaluation of the selection and award criteria (see judgments of 17 September 2015, *Ricoh Belgium v Council*, T-691/13, not published, EU:T:2015:641, paragraph 31 and the case-law cited, and of 4 July 2016, *Orange Business Belgium v Commission*, T-349/13, not published, EU:T:2016:385, paragraph 45 and the case-law cited).

- 59 In addition, Article 174 of the 2024 Financial Regulation allows the contracting authority, before the contract is signed, to cancel the procurement procedure. It follows that the contracting authority is not bound to follow through to its end a procedure for awarding a contract. The contracting authority thus has a broad discretion in assessing the factors to be taken into account for the purpose of adopting a decision to award the contract or, conversely, to cancel the procurement procedure. A decision to cancel the procurement procedure must nevertheless be based on grounds of public interest, must not be arbitrary or unfair and must not involve any breach of other rules or principles of EU law (see, to that effect, judgment of 13 October 2021, *Ciano Trading & Services CT & S and Others v Commission*, T-45/21, not published, EU:T:2021:701, paragraph 52).
- 60 For that purpose, in order to establish that, in the assessment of the facts, the contracting authority made an error so obvious that is of such a nature as to justify the annulment of the decision cancelling a procurement procedure, the evidence adduced by the applicant must be sufficient to render implausible the assessments made in the decision at issue. In other words, a plea alleging a manifest error must be rejected if, despite the evidence adduced by the applicant, the contested assessment may still be accepted as true or valid (see, by analogy, judgment of 7 June 2017, *Blaž Jamnik and Blaž v Parliament* T-726/15, EU:T:2017:376, paragraph 38 and the case-law cited).
- 61 In the present case, it follows from paragraphs 42 to 44 above that the reasoning for the contested decision, by which the Commission cancelled the procurement procedure concerned, was, in essence, the Commission's finding that the use of the service level agreement as a minimum selection criterion relating to technical and professional capacity, or as evidence which an economic operator must provide to demonstrate its technical and professional capacity, was not compatible with the 2018 Financial Regulation.
- 62 Furthermore, it is apparent from Article 167 of the 2018 Financial Regulation that the contracting authority is to award contracts on the basis of award criteria after verifying that the candidate or tenderer has access to the procedure and that it satisfies the selection criteria, which serve exclusively to assess its capacity to pursue the professional activity, as well as its economic, financial, technical and professional capacities, whereas the award criteria are to be applied to evaluate the tenders and to determine the most economically advantageous tender, according to the lowest price, the lowest cost or the best price-quality ratio.
- 63 Recital 107 of the 2018 Financial Regulation also states that selection criteria are strictly linked to the evaluation of candidates or tenderers and that the award criteria are strictly linked to the evaluation of the tenders.
- 64 In that regard, it is settled case-law that a distinction must be drawn between the selection criteria and the award criteria. Although examination of the tenderers' suitability and the award of the contract may, in theory, take place simultaneously, they remain two separate procedures governed by different rules (see judgment of 13 December 2016, *European Dynamics Luxembourg and Evropaiki Dynamiki v Commission*, T-764/14, not published, EU:T:2016:723, paragraph 54 and the case-law cited; see also, by analogy, judgment of 24 January 2008, *Lianakis and Others*, C-532/06, EU:C:2008:40, paragraph 26).
- 65 It follows that the contracting authority's examination in the context of the award stage must relate to the quality of the tenders themselves and not the selection criteria, such as the technical capacity of tenderers to perform the contract, which have already been verified at the stage of selecting the tenderers and which cannot be taken into account again for the purposes of comparing the tenders (judgment of 13 December 2016, *European Dynamics Luxembourg and Evropaiki Dynamiki v Commission*, T-764/14, not published, EU:T:2016:723, paragraph 57).
- 66 Therefore, award criteria do not include criteria that are not aimed at identifying the tender which is economically the most advantageous, but are instead essentially linked to the evaluation of the tenderers' ability to perform the contract in question (judgments of 24 April 2013, *Evropaiki Dynamiki v Commission*, T-32/08, not published, EU:T:2013:213, paragraph 62, and of 13 December 2016, *European Dynamics Luxembourg and Evropaiki Dynamiki v Commission*, T-764/14, not published, EU:T:2016:723, paragraph 58; see also, by analogy, judgment of 24 January 2008, *Lianakis and Others*, C-532/06, EU:C:2008:40, paragraph 30).

- 67 The applicants' arguments must be examined in the light of those elements.
- 68 The applicants submit, in essence, that, within its wide margin of discretion, the contracting authority could decide to regard the service level agreement as a selection criterion.
- 69 In that regard, it must be noted that Article 174 of the 2024 Financial Regulation expressly provides for the possibility of cancelling a procurement procedure before the contract is signed, including where, as in the present case, an error was made during that procedure.
- 70 In the present case, it should be noted, first, that, in the preamble to the model service level agreement in question, it was stated that it was a key element of the offer which would become binding in the form of an annex to the framework contract.
- 71 Second, it is apparent from the service level agreement in question that the tenderers had to propose measures to ensure sufficient availability of service providers for the IT profiles requested, compensation mechanisms and corrective measures to be applied during the performance of the contract, a description of the training planned to meet the technical specifications, measures to avoid interruptions of service, specific quality indicators that would be applied throughout the performance of the contract and a description of the project management methodology.
- 72 It thus follows from the service level agreement in question that the information contained therein concerned commitments by tenderers relating to the way in which they intended to organise themselves, as well as the nature of the specific mechanisms which they intended to put in place to meet the specific requirements of the tender specifications.
- 73 It must be noted that, at the very least, some of those elements may be interpreted as relating to the technical value of the tender and not as relating exclusively to the technical capacity of the tenderers.
- 74 Therefore, the Commission did not make a manifest error of assessment in considering that the service level agreement could not be included among the minimum selection criteria relating to technical and professional capacity or among the evidence which an economic operator must provide in order to demonstrate its technical and professional capacity within the meaning of point 20 of Annex I to the 2018 Financial Regulation.
- 75 That conclusion is not called into question by the other arguments put forward by the applicants.
- 76 First, the applicants submit that, contrary to what was stated in the contested decision, the Commission insisted, during the procurement procedure, on the validity of the selection criteria which it had established, in particular by stating that the service level agreement was a selection criterion.
- 77 In that regard, it is sufficient to note that that circumstance is not such as to call into question the assessment set out in paragraph 74 above.
- 78 Second, the applicants complain that the Commission stated that the service level agreement is an award criterion because it relates to the technical aspects of the tender without explaining how the service level agreement should allow the contracting authority to compare the tenderers' bids and to evaluate the one which was the most economically advantageous.
- 79 In addition, the applicants claim that, if the service level agreement were to be regarded as an award criterion, that would create a risk of an arbitrary decision being taken because the quality of services is not easily measurable and because the Commission could have been obliged to compare elements, submitted by tenderers, that are not easily comparable.
- 80 In that regard, it should be noted that those arguments seek to challenge the lawfulness of the use of the service level agreement as an award criterion.
- 81 It should be noted that the contested decision was based on the conclusion that the use of the service level agreement as a selection criterion was unlawful. Therefore, the applicants cannot validly rely, in

support of their claim for annulment of the contested decision, on an illegality resulting from the use of the service level agreement as an award criterion.

82 Third, as regards the applicants' argument that the Commission made a manifest error of assessment in adopting the contested decision with a manifest failure to state reasons, it should be borne in mind that the obligation to state reasons is an essential procedural requirement which must be distinguished from the issue of substantive legality. Thus, a failure to state reasons cannot constitute a manifest error of assessment, which concerns the substantive legality of a decision (see, to that effect, judgment of 10 July 2008, *Bertelsmann and Sony Corporation of America v Impala* (C-413/06 P, EU:C:2008:392, paragraph 181)).

83 Fourth, the applicants submit that the Commission made a manifest error of assessment in claiming that certain errors had been identified following comments made by an unsuccessful tenderer during the standstill period. When questioned in that regard at the hearing, the applicants stated that the Commission could not claim to have discovered those errors following the observations of the unsuccessful tenderer, because that issue had already been raised during the procurement procedure concerned, in particular in the context of the questions and answers session.

84 The fact that the irregularity in question was identified following the comments made by an unsuccessful tenderer during the standstill period, even if it were established, has no bearing on the question of whether the contested decision is vitiated by a manifest error of assessment. Although the applicants thus appear to dispute the origin, referred to in the contested decision, of the discovery of the irregularity resulting from the use of the service level agreement as a selection criterion, it must be held that the substantive inaccuracy alleged in that regard, even if it were established, has no bearing on the legality of the contested decision in so far as that decision is based not on the discovery of the irregularity, but on the irregularity itself, with the result that the origin of the discovery of the irregularity has no bearing on the merits of the grounds of the contested decision.

85 It follows that the second part of the first plea must be rejected, as must the first plea in its entirety.

The second plea in law, alleging breach of the principles of legal certainty and legitimate expectations

86 The applicants submit that the fact that the Commission stated during the administrative procedure that the service level agreement was a valid selection criterion, but then changed its position in the contested decision by taking the view that it could not constitute a selection criterion, is in breach of both the principles of legal certainty and legitimate expectations.

87 According to the applicants, the Commission limited itself, during the questions and answers phase, in its interpretation that the service level agreement was a selection criterion and it cannot change its interpretation of the concepts contained in the procurement documents once such a phase is completed; otherwise participants would not be able to adapt their tenders to the requirements of the procedure, which would limit their chances of success.

88 The applicants also submit, first, that the Commission assured the participants in the procurement procedure, in a precise, unconditional and consistent manner, in particular throughout the entire questions and answer phase, that the service level agreement was a valid selection criterion and, second, that that was compatible with the 2018 Financial Regulation. Consequently, those participants could not at any time have foreseen the adoption of the contested decision.

89 As regards the principle of legal certainty, the applicants argue that the relevant rules were clear. The service level agreement was regarded as a selection criterion and the Commission gave assurances as to the validity of that approach. However, the Commission suddenly changed its mind and took the view that that rule was no longer valid, without providing further explanations, thus acting in breach of the principle of legal certainty.

90 The Commission and the intervener dispute that line of argument.

- 91 The principle of legal certainty requires, on the one hand, that the rules of law be clear and precise and, on the other, that their application be foreseeable for those subject to the law, in particular, where they may have adverse consequences for individuals and undertakings. That principle requires, in particular, that legislation must enable those concerned to know precisely the extent of the obligations imposed on them, and those persons must be able to ascertain unequivocally their rights and obligations and take steps accordingly (see judgments of 29 April 2021, *Banco de Portugal and Others*, C-504/19, EU:C:2021:335, paragraph 51 and the case-law cited, and of 10 November 2017, *Jema Energy v Joint undertaking Fusion for Energy*, T-668/15, not published, EU:T:2017:796, paragraph 20 and the case-law cited).
- 92 Consequently, a provision of an EU measure is in breach of the principle of legal certainty on account of its lack of clarity only if it displays such ambiguity as to prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of that provision (see, to that effect, judgments of 14 April 2005, *Belgium v Commission*, C-110/03, EU:C:2005:223, paragraph 31, and of 22 May 2007, *Mebron v Commission*, T-216/05, EU:T:2007:148, paragraph 108).
- 93 Furthermore, according to settled case-law, the right to rely on the principle of legitimate expectations presupposes that three cumulative conditions are satisfied. First, precise, unconditional and consistent assurances originating from authorised and reliable sources must have been given to the person concerned by the EU administration. Second, those assurances must be such as to give rise to an expectation that is legitimate on the part of the person to whom they are addressed. Third, the assurances given must comply with the applicable rules (see judgment of 26 March 2025, *JDS Architects and Others v Parliament*, T-560/23, not published, EU:T:2025:338, paragraph 81 and the case-law cited).
- 94 It is therefore necessary to examine whether, in the present case, the alleged fact that the Commission first asserted during the administrative procedure that the service level agreement was a valid selection criterion, before changing its position in the contested decision by taking the view that it could not constitute such a criterion, complies with the requirements imposed by the principle of the protection of legitimate expectations and the principle of legal certainty.
- 95 In the first place, as regards the alleged breach of the principle of legitimate expectations, it should be recalled, first, that, as stated in the invitation to tender, during the procurement procedure, tenderers could put questions to the contracting authority in order to clarify the procurement documents.
- 96 In addition, Article 169(1) of the 2018 Financial Regulation provides that the contracting authority may, before the expiry of the time limit set for the receipt of requests to participate or tenders, communicate additional information about the procurement documents if it discovers an error or omission in the text.
- 97 Second, as regards the Commission's assertions during the administrative procedure, it should be noted that such assertions cannot, in the circumstances of the present case, be regarded as giving rise to a right to rely on a legitimate expectation in favour of the applicants.
- 98 As regards the third condition to be satisfied in order to rely on the principle of legitimate expectations, referred to in paragraph 93 above, the existence of such a right presupposes that the assurances given by the competent institution comply with the applicable rules.
- 99 As follows from the response to the second part of the first plea, the Commission did not make a manifest error of assessment in finding that the service level agreement could not be included among the minimum selection criteria relating to technical and professional capacity or among the evidence which an economic operator must provide in order to demonstrate its technical and professional capacity within the meaning of point 20 of Annex I to the 2018 Financial Regulation.
- 100 Thus, even if the Commission had given indications, during the administrative procedure, that the service level agreement at issue constituted a valid selection criterion, those indications would not be such as to give rise to a right to rely on a legitimate expectation in favour of the applicants in so far as those indications did not comply with the applicable rules, in particular point 20 of Annex I to the 2018 Financial Regulation.

- 101 Third, in any event, as regards the first condition to be satisfied in order to rely on the principle of legitimate expectations, referred to in paragraph 93 above, namely the existence of precise, unconditional and consistent assurances, it should be recalled that no party may allege breach of the principle of protection of legitimate expectations without having been given precise assurances by the EU administration (judgment of 18 April 2007, *Deloitte Business Advisory v Commission*, T-195/05, EU:T:2007:107, paragraph 104).
- 102 In that regard, the possibility for a contracting authority to cancel a procurement procedure before the contract is signed, without the candidates or tenderers being entitled to claim any compensation, is expressly provided for in Article 174 of the 2024 Financial Regulation.
- 103 In addition, the invitation to tender stated that the contracting authority could, up until the contract was signed, cancel the tendering procedure.
- 104 Furthermore, the notification letter, sent to the applicants informing them that their tender had been successful, stated that the notification of award of the specific framework contract did not constitute a commitment on the part of the contracting authority and that, up until the contract was signed, that authority had the option of cancelling the procurement procedure, without that giving rise to any right to any compensation.
- 105 Thus, in their capacity as prudent and well-informed economic operators and as tenderers in that procedure, the applicants could not have been unaware that the Commission could cancel that procedure. They were therefore in a position to foresee the possible adoption of the contested decision (see, to that effect, judgment of 13 October 2021, *Ciano Trading & Services CT & S and Others v Commission*, T-45/21, not published, EU:T:2021:701, paragraph 41).
- 106 In the second place, as regards the alleged breach of the principle of legal certainty, it must be borne in mind that neither Article 174 of the 2024 Financial Regulation, which constitutes the legal basis for the contested decision, nor any other provision of that regulation provides that the Commission may not change its mind between the administrative procedure and the adoption of a decision cancelling the procurement procedure.
- 107 In addition, it is apparent from the applicable legal framework and from the context of the case, both referred to in paragraphs 102 to 104 above, that the tenderers were aware that, as long as the contract was not signed, the contracting authority could, under Article 174 of the 2024 Financial Regulation, cancel the procurement procedure in its entirety. In that regard, the applicants have not proved, on the one hand, that the rules of law were not clear and precise and, on the other hand, that the application of those rules was not foreseeable.
- 108 Consequently, the applicants have not demonstrated that they were not in a position to know precisely the extent of their obligations.
- 109 It follows that the complaint alleging breach of the principle of legitimate expectations must be rejected, as must, therefore, the second plea.

The third plea in law, alleging breach of the principle of good administration

- 110 The applicants submit that the Commission did not communicate to them the cancellation of the procurement procedure as soon as possible, as required by Article 174 of the 2024 Financial Regulation. They state that, after the delivery of the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), the Commission took nearly one month to communicate to them the adoption of the contested decision.
- 111 First of all, the applicants argue that the Commission communicated the contested decision to them only because they had immediately invited the Commission to adopt a position on the judgment referred to in paragraph 110 above.
- 112 Next, they argue, the adoption of the contested decision required neither time nor effort on the part of the Commission, since the latter copied verbatim the statement of reasons set out in the letter of 8 April

2022.

- 113 Furthermore, the Commission has still not explained all of the context and circumstances in which the contested decision was adopted.
- 114 Lastly, the applicants claim that the Commission's failure to comply with its duty of care and good administration caused actual damage to them. First, they received an incorrect statement of reasons from the Commission as to why the procurement procedure was cancelled and, second, they still do not have the information relevant to the present case.
- 115 The Commission and the intervener dispute that line of argument.
- 116 As a preliminary point, the plea of inadmissibility raised by the Commission alleging that the third plea of the action is insufficiently clear and precise must be rejected. It is sufficiently clear from the applicants' pleadings that they complain that the Commission acted in breach of the principle of good administration on account of the late communication of the contested decision and an inadequate statement of reasons.
- 117 As regards the substance, it must be recalled that Article 41 of the Charter of Fundamental Rights of the European Union, entitled 'Right to good administration' provides, in paragraph 1, that 'every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union.'
- 118 Moreover, the reasonableness of the period taken up by proceedings is to be appraised in the light of the circumstances specific to each case, such as its complexity and the conduct of the parties (judgment of 13 June 2013, *HGA and Others v Commission*, C-630/11 P to C-633/11 P, EU:C:2013:387, paragraph 82).
- 119 In the present case, in the first place, it is not disputed that the contested decision was communicated to the applicants on the day it was adopted, namely 19 November 2024.
- 120 In the second place, the fact, relied on by the applicants, that the contested decision was adopted 27 days after the delivery of the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), does not entail a breach of the principle of good administration.
- 121 In the light of the complexity of the issues raised by the procurement procedure at issue, and in view of the consequences of the contested decision for the Commission and the tenderers and the fact that the Court annulled the initial decision by judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), a period of 27 days for the adoption of the contested decision remedying the failure to state reasons for the initial decision does not appear unreasonable.
- 122 That conclusion is not called into question by the applicants' arguments.
- 123 In that regard, first, it should be noted that, contrary to what the applicants claim, the Commission adopted the contested decision because, under Article 266 TFEU, the institution, body, office or agency whose act has been declared void is required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union. In the present case, the initial decision was annulled on account of a formal defect, namely an inadequate statement of reasons and, in order to comply with the requirements of Article 266 TFEU, the Commission considered it appropriate to adopt the contested decision.
- 124 Second, as regards the arguments alleging infringement of the obligation to state reasons for the contested decision, which forms an integral part of the principle of good administration, those arguments must be rejected for the reasons set out in the examination of the first part of the first plea, alleging infringement of the obligation to state reasons.
- 125 The third plea must therefore be rejected.

The fourth plea in law, alleging breach of the principles of proportionality and equal treatment

- 126 The applicants submit that the Commission acted in breach of the principles of proportionality and equal treatment.
- 127 It follows from Article 175(3) of the 2018 Financial Regulation and from point 35.1 of Annex I to that regulation that the signing of the contract is, in certain cases, preceded by a standstill period of ten days which runs from the notification of the award letter in order to allow unsuccessful tenderers to challenge the award decision. According to the applicants, during that period, the contracting authority may suspend the signing of the contract only if it is justified by relevant information.
- 128 They submit that, in the present case, since the award letter was notified to the applicants on 11 February 2022, the standstill period expired on 21 February 2022. However, the Commission did not suspend the procedure during that period, but adopted the initial decision on 3 March 2022.
- 129 The applicants submit that the Commission was required to suspend the signing of the contract rather than cancel the procurement procedure. Cancellation is, they argue, a more onerous measure and is thus in breach of the principle of proportionality.
- 130 In addition, the cancellation led to the launch of a new procurement procedure (DIMOS VI), in which the applicants suffered a competitive disadvantage, in breach of the principle of equal treatment, since the unsuccessful tenderers were informed of the characteristics of the applicants' previous tender.
- 131 In their observations on the statement in intervention, the applicants submit that the General Court's annulment of an unlawful act has retroactive effect, which means that the annulled act is deemed never to have existed.
- 132 They argue that, in the present case, that required the Commission to take all necessary measures to eliminate the effects of the unlawful cancellation of the procurement procedure, including, if necessary, the termination or adjustment of subsequent contracts, such as those awarded in the new procurement procedure (DIMOS VI), which was subsequent to the procurement procedure at issue.
- 133 The Commission and the intervener dispute that line of argument.
- 134 As a preliminary point, the applicants' arguments relating to the initial decision must be rejected as ineffective. The same applies in particular to their arguments that the Commission should have suspended the signing of the contract, in accordance with Article 175(3) of the 2018 Financial Regulation and point 35.1 of Annex I to that regulation, rather than cancelling the procurement procedure by adopting the initial decision. That decision was annulled by the judgment of 23 October 2024, *Xpand Consortium and Others v Commission* (T-281/22, not published, EU:T:2024:724), and is not the subject of the present action. Moreover, the applicants have not explained how the contested decision is affected by the same procedural defects as the initial decision.
- 135 Next, as regards the alleged breach of the principle of proportionality, it should be recalled that that principle is one of the general principles of EU law, that requires that acts of the EU institutions be appropriate for attaining the legitimate objectives pursued by the legislation at issue and do not exceed the limits of what is necessary in order to achieve those objectives; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 165).
- 136 In order to comply with the principle of proportionality, the measures adopted must be necessary in order to achieve the aim pursued. In other words, a means will be considered necessary to achieve the objective only if no other means of equal effectiveness, but with a less adverse effect on its addressee, are available (see judgment of 21 December 2022, *Vialto Consulting v Commission*, T-537/18, not published, EU:T:2022:852, paragraph 165 and the case-law cited).
- 137 In the first place, it is necessary to examine the appropriateness of the contested decision. In that regard, it should be recalled that it is apparent from the contested decision that its legal basis is

Article 174 of the 2024 Financial Regulation, which provides that the contracting authority may decide to cancel the procurement procedure before the contract is signed.

- 138 Next, it should be noted that that decision cancels the call for tenders for the contract at issue on the ground that it did not comply with the applicable rules. In particular, as the Commission states in that decision, the service level agreement could not, in its view, qualify as a minimum selection criteria concerning technical and professional capacity or as evidence to be provided by an economic operator to demonstrate its technical and professional capacity, within the meaning of point 20 of Annex I to the 2018 Financial Regulation.
- 139 In the second place, as regards the necessity of the contested decision, the applicants submit that it was possible to suspend the signing of the framework contract, without it being necessary to cancel the entire contract award procedure at issue. According to the applicants, during the standstill period, which starts to run on the day after the dispatch of the award letter, the contracting authority could simply suspend the signing of the contract for further examination.
- 140 As the Commission rightly stated at the hearing, only the adoption of the contested decision made it possible to achieve the objective described in paragraph 138 above, namely to remove the illegality that vitiated the award procedure, that illegality having been caused by the use of the service level agreement as a selection criterion. Since it had been found that the call for tenders for the contract at issue did not comply with the applicable rules, a suspension of that procedure could not have been sufficient to remedy that illegality.
- 141 In that regard, it should be noted that point 36.1 of Annex I to the 2024 Financial Regulation provides for the possibility for a contracting authority to suspend a procurement procedure during the standstill period. Furthermore, Article 174 of the 2024 Financial Regulation provides for the possibility to cancel the procedure before the contract is signed, which means that such cancellation may occur during the standstill period which precedes the signing of the contract. Thus, it in no way follows from the wording of those provisions that a cancellation cannot take place during that standstill period.
- 142 Therefore, in the light of the content of the applicants' arguments, it has thus not been established that the contested decision manifestly goes beyond what is necessary to achieve the objective referred to in paragraph 138 above.
- 143 In the third place, the applicants have also failed to demonstrate that the contested decision entailed manifestly disproportionate disadvantages in the light of the objective pursued, described in paragraph 138 above.
- 144 The applicants submit, in essence, that the cancellation of the procedure at issue and the launch of a new procedure (DIMOS VI) entailed serious and disproportionate consequences for them. They rely, first, on the loss of almost two years in respect of the procurement procedure and, second, on the damage caused by the launch of a new procedure, irrespective of the outcome of the action, since the DIMOS VI contract has already been awarded to a better ranked competitor.
- 145 However, as the Commission has stated, it should be noted that, when considering cancellation or suspension of the procurement procedure, cancellation is less onerous in the light of the objectives pursued. Suspension could have resulted in the interruption of the services purchased in previous procedures, because it would not have been possible, under Article 175 of the 2024 Financial Regulation, to extend the previous contract signed under the previous procurement procedure (DIMOS IV).
- 146 Thus, the applicants have not demonstrated that the contested decision entailed disadvantages which were manifestly disproportionate to the objectives pursued.
- 147 As regards the alleged breach of the principle of equal treatment, it should be noted that that principle, as a general principle of EU law, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified (judgment of 3 February 2021, *Fussl Modestraße Mayr*, C-555/19, EU:C:2021:89, paragraph 95).

- 148 The applicants submit that the contested decision is contrary to the principle of equal treatment in that it allowed the unsuccessful tenderers to have at their disposal information relating to the applicants' tender, placing those unsuccessful tenderers in a more favourable competitive position with a view to future procurement procedures.
- 149 A demonstration of a possible breach of the principle of equal treatment in connection with a future procurement procedure cannot have any consequences for the legality of the contested decision. The applicants thereby rely on a possible breach of the principle of equal treatment which, moreover, would be subsequent to the contested decision. In those circumstances, they have failed to adduce proof of the existence of such a breach on the date of the contested decision, as required by the case-law cited in paragraph 57 above.
- 150 The fourth plea must therefore be rejected and, consequently, the action must be dismissed in its entirety.

Costs

- 151 Under Article 134(1) of the Rules of Procedure of the General Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicants have been unsuccessful, they must be ordered to bear their own costs and to pay those incurred by the Commission and by the intervener, in accordance with the forms of order sought by the latter two parties.

On those grounds,

THE GENERAL COURT (Ninth Chamber)

hereby:

- 1. Dismisses the action;**
- 2. Orders Xpand Consortium, NTT Data Belgique, Sopra Steria Benelux and Fujitsu Technology Solutions to bear their own costs and to pay those incurred by the European Commission and by Arhs developments SA.**

Kingston

Marcoulli

Zilgalvis

Delivered in open court in Luxembourg on 10 June 2026.

V. Di Bucci

S. Kingston

Registrar

President

* Language of the case: English.