— the General Court failed to find that the documents in issue should be protected by Article 4(3) of the Transparency Regulation; and

— the EMA failed to carry out a balancing exercise as required by law.


Appeal brought on 7 March 2018 by MSD Animal Health Innovation GmbH, Intervet international BV against the judgment of the General Court (Second Chamber) delivered on 5 February 2018 in Case T-729/15: MSD Animal Health Innovation GmbH and Intervet international BV v European Medicines Agency

(Case C-178/18 P)

(2018/C 231/10)

Language of the case: English

Parties

Appellants: MSD Animal Health Innovation GmbH, Intervet international BV (represented by: P. Bogaert, advocaat, B. Kelly, Solicitor, J. Stratford QC, C. Thomas, Barrister)

Other party to the proceedings: European Medicines Agency

Form of order sought

The appellants claim that the Court should:

— grant the appellants’ appeal and set aside the judgment of the General Court;

— annul the decision communicated by the EMA to the appellants on 3 December 2015 to release certain information under the Transparency Regulation (1); and

— order the EMA to pay the appellants’ legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

The judgment should be annulled for the following reasons:

— the General Court failed to find that the documents in issue were protected by a general presumption of confidentiality;

— the General Court failed to find that the documents in issue in their entirety constitute commercially confidential information that is protected by Article 4(2) of the Transparency Regulation;

— the General Court failed to find that the documents in issue should be protected by Article 4(3) of the Transparency Regulation; and

— the EMA failed to carry out a balancing exercise as required by law.