Action brought on 11 February 2013 — InterMune UK and Others v EMA

(Case T-73/13)

(2013/C 114/60)

Language of the case: English

Parties

Applicants: InterMune UK Ltd (London, United Kingdom); InterMune, Inc. (Brisbane, United States); and InterMune International AG (Muttenz, Switzerland) (represented by: I. Dodds-Smith and A. Williams, Solicitors, T. de la Mare, Barrister, and F. Campbell, lawyer)

Defendant: European Medicines Agency

Form of order sought

The applicants claim that the Court should:

— Annul the decision communicated by the defendant to the applicants on 15 January 2013 to release certain information under Regulation (EC) No 1049/2001 ([1]), insofar as that decision concerns the release of information previously submitted by the applicants to the defendant which is not already in the public domain; and

— Order the defendant to pay the applicants' legal and other costs and expenses in relation to this matter.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging that the defendant has failed properly to engage in the balancing exercise which it is required to conduct under Article 4.2 of Regulation (EC) No 1049/2001, in the sense of assessing whether there is, in fact, any public interest in disclosure of the disputed information which overrides the need to protect the applicants' commercial interests from the substantial damage which would be caused by such disclosure.

2. Second plea in law, alleging that the defendant has failed properly to take into account other important factors relevant to the balancing exercise required by law, including:

   — the requirements of specific EU legislation (notably Regulation (EC) No 726/2004 ([2]), in particular its Article 14.11);

   — the interpretative obligations placed upon all EU institutions when construing EU legislation by Article 39.3 of TRIPS (Agreement on Trade-Related Aspects of Intellectual Property Rights);

   — the fundamental rights to property and to privacy, as protected by the Charter of Fundamental Rights of the European Union, assessed in light of a careful consideration of all relevant facts so as to enable a fact-sensitive proportionality analysis; and

   — the duty to follow its own published guidance and policies on the importance of protecting commercially confidential information.

3. Third plea in law, alleging that if the defendant had properly carried out the required balancing exercise, and properly considered all relevant factors, the only lawful, proportionate and/or reasonable conclusion would have been that the disputed information should not be released.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

([2]) Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1)

Action brought on 15 February 2013 — United Kingdom v ECB

(Case T-93/13)

(2013/C 114/61)

Language of the case: English

Parties

Applicant: United Kingdom of Great Britain and Northern Ireland (represented by: K. Beal, QC, and E. Jenkinson, agent)

Defendant: European Central Bank

Form of order sought

The applicant claims that the Court should:

— Partially annul the Decision of the European Central Bank of 11 December 2012 amending decision ECB/2007/7 concerning the terms and conditions of TARGET2-ECB (Decision ECB/2012/31) (OJ 2013 L 13, p. 8.);

— Partially annul the Guideline of the European Central Bank of 5 December 2012 on a Trans-European Automated Real-time Gross settlement Express Transfer system (TARGET2) (Guideline ECB/2012/27) (OJ 2013 L 30, p. 1);

— Order the defendant to pay the costs of these proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on seven pleas in law.

1. First plea in law, alleging that the ECB lacked competence to publish the contested acts, either at all or alternatively without recourse to the promulgation of a legislative instrument such as a Regulation, adopted either by the Council or alternatively by the ECB itself;

2. Second plea in law, alleging that contested acts either *de jure* or *de facto* impose a residence requirement on Central Clearing Counterparties ('CCPs') that wish to undertake clearing or settlement operations in the euro currency whose daily trades exceed a certain volume. Further or alternatively they restrict or impede the nature and/or extent of services or capital which may be supplied to CCPs located in non-euro area Member States. The contested acts infringe all or any of Articles 48, 56 and/or 63 TFEU, in that:

   — CCPs established in non-euro area Member States, such as the United Kingdom, will be obliged to relocate their centres of administration and control to Member States which are members of the Eurosystem. They will also be obliged to re-incorporate as legal persons recognised in the domestic law of another Member State;

   — In the event that such CCPs do not relocate as required, they will be precluded from access to the financial markets in the Eurosystem Member States, either on the same terms as CCPs established in those territories, or at all;

   — Such non-resident CCPs will not be entitled to facilities offered by the ECB or the National Central Banks ('NCBs') of the Eurosystem, either on the same terms or at all;

   — As a result, the ability of such CCPs to offer clearing or settlement services in the euro currency to customers in the Union will be restricted or even prohibited in its entirety.

3. Third plea in law, alleging that the contested acts infringe Articles 101 and/or 102 TFEU, read in conjunction with Article 106 TFEU and Article 13 TEU, since:

   — They effectively require all clearing operations proceeding in the euro currency exceeding a certain level to be conducted by CCPs established in a euro area Member State;

   — They effectively direct the ECB and/or euro-area and/or NCBs not to supply euro currency reserves to CCPs established in non-euro area Member States if they exceed the thresholds set in the decision.

4. Fourth plea in law, alleging that the requirement for CCPs established in non-euro area Member States to adopt a different corporate personality and domicile is direct or indirect discrimination on grounds of nationality. It also offends the general EU principle of equality, since CCPs established in different Member States are subject to disparate treatment without any objective justification for the same.

5. Fifth plea in law, alleging that the contested acts infringe relevant provisions of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4July 2012 on OTC derivatives, central counterparties and trade repositories (OJ 2012 L 201, p. 1).

6. Sixth plea in law, alleging that contested acts infringe all or any of Articles II, XI, XVI and XVII of the General Agreement on Trade in Services (GATS).

7. Seventh plea in law, alleging that, without assuming the burden of establishing that a public interest justification for such restrictions is not available (the onus being on the ECB to advance its case for a derogation if it so chooses), the United Kingdom contends that any public policy justification advanced by the ECB would not satisfy the requirement of proportionality, since less restrictive means of ensuring control over financial institutions resident within the Union but outside the euro area are available.

Appeal brought on 17 February 2013 by Ioannis Ntouvas against the judgment of the Civil Service Tribunal of 11 December 2012 in Case F-107/11 Ntouvas v ECDC

(Case T-94/13 P)

(2013/C 114/62)

Language of the case: English

Parties

Appellant: Ioannis Ntouvas (Agios Stefanos, Greece) (represented by: V. Kolias, lawyer)