



Reports of Cases

Case T-164/12 R

Alstom
v
European Commission

(Interim relief — Competition — Commission decision to transmit documents to a national court — Confidentiality — Right to effective judicial protection — Application for interim measures — Prima facie case — Urgency — Weighing up of interests)

Summary — Order of the President of the General Court, 29 November 2012

1. *Application for interim measures — Suspension of operation of a measure — Interim measures — Conditions for granting — Prima facie case — Urgency — Serious and irreparable damage — Cumulative nature — Balancing of all the interests involved — Order of examination and method of verification — Discretion of the court hearing the application for interim relief*

(Arts 256(1) TFEU, 278 TFEU and 279 TFEU; Rules of Procedure of the General Court, Art. 104(2))

2. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Balancing of all the interests involved — Commission decision to transmit confidential documents to a national court*

(Art. 278 TFEU)

3. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Urgency — Serious and irreparable damage — Commission decision to transmit confidential documents to a national court — Risk of infringement of the right to an effective remedy*

(Art. 278 TFEU; Charter of Fundamental Rights of the European Union, Art. 47)

4. *Application for interim measures — Suspension of operation of a measure — Conditions for granting — Prima facie case — Examination prima facie of the pleas in law put forward in support of the main action — Action against a Commission decision to transmit confidential documents to a national court — Plea alleging adequacy of the guarantees of confidentiality offered by the national court — Plea prima facie not unfounded*

(Arts 278 TFEU and 339 TFEU)

1. See the text of the decision.

(see paras 24-27)

2. The weighing up of the various interests involved requires the judge hearing the application for interim measures to determine whether or not the applicant's interest in obtaining the interim measures sought outweighs the interest in immediate application of the contested measure by examining, more specifically, whether annulment of that measure by the Court when ruling on the main application would allow the situation which would have been brought about by its immediate operation to be reversed, and, conversely, whether suspension of its operation would prevent it from being fully effective in the event of the main application being dismissed. In that context, the judge hearing the application for interim measures may also consider it appropriate to take into account the interests of third parties.

The purpose of the procedure for interim relief is merely to guarantee the full effectiveness of the future decision on the main action. Consequently, such a procedure is merely ancillary to the main action to which it is an adjunct, and accordingly the decision made by the judge hearing an application for interim measures is by its nature interim in the sense that it must not either prejudice the future decision on the substance of the case nor render it illusory by depriving it of effectiveness. It necessarily follows that the interest defended by a party to interim relief proceedings does not merit protection where that party's request is that the judge hearing the application should adopt a decision which, far from being a merely interim measure, serves to prejudice the future decision on the main action and to render it illusory by depriving it of its effectiveness.

That would be so in the case of proceedings before the judge hearing an application for interim measures concerning the transmission to a national court — requested in the ongoing litigation — by an institution of documents containing professional secrets received by that institution in competition proceedings. Should the application for interim measures be refused and the documents consequently transmitted to the national court, that court would be in a position to deliver judgment before the Courts of the European Union had done so in the main proceedings. Thus, the consequence of dismissal of the application for interim measures would be to prejudice the future decision in the main action, namely a dismissal of the action for annulment.

Consequently, in such a case, operation of the decision to transmit those documents must be suspended in order to balance the effective application of the European Union competition rules with respect for the ancillary nature of interim relief proceedings.

(see paras 29-31, 36, 37, 39, 42)

3. There is a clear urgency in protecting the applicant's interest where it is likely to suffer serious and irreparable harm in the event of his application for interim measures being dismissed. That would be so in the case of proceedings before the judge hearing an application for interim measures concerning the transmission to a national court — requested in the ongoing litigation — by an institution of documents containing professional secrets received by that institution in competition proceedings.

If the application for interim measures were to be refused and the documents transmitted and, moreover, the national court delivered judgment before the Courts of the European Union had had time to deliver a ruling on the action in the main proceedings concerning the possible unlawfulness of the transmission of information, the interested party's right to effective judicial protection would be rendered meaningless.

Consequently, since the fundamental right to an effective remedy, enshrined in Article 6 of the European Convention on Human Rights and in Article 47 of the Charter of Fundamental Rights of the European Union may be seriously and irreparably harmed, subject to an examination of the condition that there should be a *prima facie* case, it is clearly urgent that the suspension of operation requested be granted.

(see paras 37, 45, 47, 49)

4. In interim relief proceedings, the condition relating to a *prima facie* case is satisfied where at least one of the pleas in law put forward by the applicant for interim measures in support of the main action appears, *prima facie*, to be relevant and in any event not unfounded, in that it reveals the existence of difficult legal issues the solution to which is not immediately obvious and therefore calls for a detailed examination that cannot be carried out by the judge hearing the application for interim measures but must be the subject of the main proceedings, or where the discussion of issues by the parties reveals that there is a major legal disagreement whose resolution is not immediately obvious.

In the context of an application for suspension of operation of a Commission decision to transmit documents containing professional secrets to a national court, there is, at first sight, a *prima facie* case as regards a line of argument that raises novel questions of law in relation to the level of guarantees offered by the national court in order to protect the confidentiality of the information transmitted, questions which cannot be considered as of no relevance and the resolution of which deserves thorough examination within the main proceedings.

It is not inconceivable that the Court, when ruling on the main application, would find it appropriate to rule on the extent of the control to be exercised by the Commission in ensuring that the confidential information is transmitted only if the national court offers specific guarantees that it can and will protect the confidentiality of that information. In other words, the Court might be led, when ruling on the substance, to question whether the precautions taken by the Commission in order to fulfil its duty under Article 339 TFEU are sufficient, or whether it ought to carry out a more detailed assessment of the arrangements proposed by the national court in order to protect the confidentiality of the information requested. Furthermore, even if those precautions were found to be adequate, in principle, for the fulfilment of that duty, it might not be possible for the protection of third parties to be fully ensured in certain cases even if the Commission takes all the necessary precautions. In those exceptional cases, the Commission may refuse to disclose documents to national judicial authorities.

(see paras 50, 58, 59, 61)