

T-203/18 R – Order of the President of the General Court – 3 May 2018

Summary

On 3 May 2018, the President of the General Court issued [an order](#) following an application for interim measures as part of the case T-203/18 R instituted by VQ (bank) against the European Central Bank (ECB).

Factual background

The dispute relates to a decision issued by the ECB on 14 March 2018, in which the ECB, acting as the prudential supervisor of VQ, imposed a penalty of EUR 1 600 000 on VQ for having repurchased its own shares in the period between 1 January 2014 and 7 November 2016 without the prior permission of the competent authority and ordered the publication of the said decision on its website. On 23 March 2018, VQ brought an action before the Court requesting the annulment of the said decision. On 26 March 2018, VQ also submitted a separate application for interim measures pursuant to articles [278 TFEU](#) and [279 TFEU](#), requesting the suspension of the said decision and its subsequent publication. VQ argued that, first, its action in the main proceedings would become devoid of purpose if the ECB were to publish the contested decision, and, second, that the publication of the contested decision would lead to a significant decrease in the market value of its shares.

Legal background

Pursuant to articles [278](#), [279](#) and [256\(1\)](#) TFEU, actions do not produce by default a suspensory effect, unless the judge hearing an application order suspension of the operation of an act contested before the General Court or prescribe interim measures.¹ There are two steps in a judge's assessment. First, the judge needs to establish that an order is urgent in so far as it avoids serious and irreparable harm to the applicant's interests, and thus it must be made and produce its effects before a decision is reached in the main action. Second, once the conditions have been cumulatively met, the judge is required to weigh the existing competing interests.² However, there is no rule of law imposing a pre-established scheme of analysis within which the need to order interim measures must be assessed.³

The President's Order

The President of the General Court first assessed the conditions related to urgency. Following settled case-law, damage of a pecuniary nature cannot, in principle, be regarded as irreparable since, as a general rule, pecuniary compensation is capable of restoring the aggrieved person to the situation that prevailed before he suffered the damage.⁴ Where the harm alleged is financial in nature, the interim measures sought are justified if it appears that, in the absence of those measures, the applicant would be in a position that would imperil its financial viability before final judgment is given in the main action, or if its market share would be affected substantially given the specific circumstances of the case.⁵

Regarding VQ's first claim that its action in the main proceedings would become devoid of purpose if the ECB were to publish the contested decision, the judge ruled that this argument

¹ [Order of 19 July 2016, Belgium v Commission, T 131/16 R, EU:T:2016:427](#), paragraph 12.

² [Order of 2 March 2016, Evonik Degussa v Commission, C 162/15 P-R, EU:C:2016:142](#), paragraph 21 and the case-law cited.

³ [Order of 19 July 2012, Akhras v Council, C 110/12 P\(R\)](#), paragraph 23 and the case-law cited.

⁴ [Order of 23 April 2015, Commission v Vanbreda Risk & Benefits, C 35/15 P\(R\), EU:C:2015:275](#), paragraph 24 and the case-law cited.

⁵ [Order of 12 June 2014, Commission v Rusal Armenal, C 21/14 P-R, EU:C:2014:1749](#), paragraph 46 and the case-law cited.

cannot stand by default since the request of the action (annulment of decision) and the request of the interim measures application (suspension of publication) are different. Moreover, merely stating that publication would have definitive effects cannot suffice to demonstrate that the matter is urgent. On VQ's second claim that the publication of the contested decision would lead to a significant decrease in the market value of its shares, the judge stated that VQ did not provide sufficient evidence for that, especially since the loss in that case would be incurred primarily by shareholders and not the company itself, and added that VQ did not prove that its financial viability was at risk. Further, the claim that the contested decision would irreversibly damage its reputation was, in the judge's view, unreasonable since as a general rule, annulment of the contested decision on conclusion of the main proceedings provides sufficient reparation for the non-material damage alleged.⁶ Therefore, the judge rejected the application for interim measures for lack of urgency, without it being necessary to examine the condition relating to a prima facie case or the need to weigh up the interests involved.

⁶ Order of 10 December 2015, GGP Italy v Commission, T 474/15 R, not published, EU:T:2015:958, paragraph 35 and the case-law cited.