Court of Justice of the European Union
PRESS RELEASE No 181/18
Luxembourg, 21 November 2018

Press and Information

Judgment in Case C-29/17
Novartis Farma SpA v Agenzia Italiana del Farmaco (AIFA) and Others

The reimbursement by a national healthcare insurance system of a medicinal product for a use not covered by its marketing authorisation (off-label use) is not contrary to EU law

However, that medicinal product must still adhere to EU pharmaceutical rules

The undertaking Roche Italia ('Roche') holds the marketing authorisation ('MA') for Avastin, a biotechnological product intended for the treatment of certain cancers. However, Avastin is often prescribed for the treatment of the eye disease, age-related macular degeneration ('ARMD'), despite the fact that its MA does not cover that condition. For ophthalmological purposes, Avastin must be from its original vial and divided into single-use syringes for intravitreal injection.

In 2014, the Agenzia italiana del farmaco (Italian Medicines Agency, 'AIFA') placed Avastin on the list of medicinal products which the Servizio Sanitario Nazionale (National Health Service, Italy; 'the SSN') reimburses for the treatment of ARMD subject to certain conditions being satisfied. Accordingly, the repackaging of Avastin must be undertaken in authorised pharmacies. Furthermore, patients, to whom hospitals administer that medicinal product, must receive sufficient information, including on the existence of alternative therapies.

Amongst those alternative therapies, Lucentis has been specifically authorised for the treatment of ARMD. That medicinal product, which is marketed by the undertaking Novartis Farma ('Novartis'), is reimbursed by the SSN,[1] but it is considerably more expensive than Avastin.

Taking the view that the decisions of the AIFA favour the use of Avastin[2] under conditions not in accordance with the terms of its MA, Novartis challenged those decisions before the Italian courts. In that context, the Consiglio di Stato (Council of State, Italy), asks the Court of Justice whether national rules are compatible with EU law which lay down the terms of use of Avastin off-label, the pharmacovigilance powers of the AIFA in that regard and the reimbursement by the SSN of repackaged Avastin for financial reasons.

In today's judgment, the Court reaffirms that **the organisation and management of health services are the responsibility of the Member States, as regards setting the prices of medicinal products and their inclusion in the scope of the national healthcare insurance system.**

The Court notes that, in exercising those powers the Member States must comply with EU law.

The Court observes that Avastin, even after being repackaged according to the rules laid down by the Italian authorities, falls within the scope of Directive 2001/83 which aims 'to exercise control

[1] Avastin repackaged for ophthalmological use costs the SSN € 82 per dose, Lucentis costs it € 902.
[2] In 2014, the Autorità Garante della Concorrenza e del Mercato (Authority responsible for competition compliance and enforcement of market rules, Italy) fined the pharmaceutical groups Roche and Novartis for an arrangement intended to reduce the ophthalmological use of the medicinal product Avastin and increase that of Lucentis. The Court of Justice held in its judgment of 23 January 2018 in Case C-179/16, Hoffmann-La Roche, that such an arrangement could constitute a restriction of competition 'by object' see Press Release No 6/18.

over the entire chain of distribution of medicinal products, from their manufacture or import into the [EU] through to supply to the public'.

The Court then notes that EU law prohibits neither the off-label prescription of a medicinal product nor its repackaging for such use, but does require that they comply with the certain conditions, including the requirement under that directive of holding an MA and manufacturing authorisation.

The Court considers, however, that the repackaging of Avastin for a use not covered by its MA does not require a new MA since that process: (i) does not result in a modification of the medicinal product, (ii) is prescribed by a doctor by means of an individual prescription, (iii) is undertaken by pharmacies lawfully authorised for that medicinal product to be administered in hospitals (facts to be verified by the national court).

The Court also considers that a new manufacturing authorisation is not necessary where Avastin is, on the basis of an individual prescription, repackaged by a pharmacy lawfully authorised to that effect and administered in hospitals (facts to be verified by the national court).

The Court concludes that **the directive does not preclude national regulations which lay down the conditions under which Avastin may be repackaged in order to be used for the treatment of ophthalmological indications not covered by its MA**.

Lastly, the Court notes that **the pharmacovigilance system laid down in Regulation No 726/2004 also covers any use of a medicinal product outside the terms of its MA.** As regards a biotechnological product, thereby subject to the centralised procedure,[3] pharmacovigilance is exercised by the national competent authorities (such as the AIFA) and the European Medicines Agency ('EMA'), which ensures their coordination. Therefore, **the regulation does not preclude a national measure which authorises the AIFA to monitor medicinal products such as Avastin the off label use of which is reimbursed by the SSN**, and, where relevant, to introduce measures necessary to safeguard patient safety.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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[3] Regulation No726/2004 lays down a centralised procedure (at EU level) for the authorisation of certain medicinal products, including those of certain biotechnological processes, and a pharmacovigilance system at EU level for medicinal products authorised pursuant to the centralised procedure.