



Capsulas

Ten years of transparency and access to public information

Summary of Joan Carles Bailach's speech at the Course on Pharmaceutical Law of CEFI Foundation

Background

2023 marked 10 years since the approval of Law 19/2013, of 9 December, on transparency, access to public information and good governance (LTAIBG). It is therefore a good opportunity to review (i) what impact this law has had on the field of medicinal products; (ii) where we are today; and (iii) what challenges we will face in the coming years.

Impact on the medicinal product sector

Over the past 10 years, there have been numerous requests under the LTAIBG for access to public information regarding the price and financing conditions of various medicinal products. The Ministry of Health and pharmaceutical companies have firmly defended the confidentiality of this information and, therefore, thereby opposing any attempts to provide access to it. The Transparency and Good Governance Council (CTBG), for its part, has been in favour of providing access to this information.

The differences on this issue have generated much litigation.

Current situation

Procedurally, one of the most controversial issues was resolved by the Supreme Court in its judgment of 8 March 2021 (no. 315/2021). This judgment concluded that the CTBG must hear pharmaceutical companies affected by a request for access to information, even when the Ministry of Health had not done so, before deciding

on whether to provide access. If the CTBG does not know to whom it must give a hearing, the CTBG is empowered to order the proceedings to be taken back to the time when the Ministry of Health should have granted them a hearing.

At the substantive level, the issue is still unresolved. Contradictory judgments have been issued, although in the last year most have been in favour of granting access to the price and financing conditions of medicinal product. A Supreme Court decision in this regard is expected in the coming years.

During these years, new legal instruments regulating the right of access to public information have also been introduced. On 1 January 2024, the Tromsø Convention, which regulates access to "public documents" held by administrations, entered into force in Spain. The effects of this Convention are expected to be limited, as most of its provisions are already reflected in the current LTAIBG. In this sense, although there is some difference in the limits of access to public information between the Tromsø Convention and the LTAIBG, it is not expected to have a major impact. It will be necessary to pay attention to how the CTBG integrates the content of the Tromsø Convention in its decisions.

Future challenges

One of the issues that will require particular attention in the coming years is the complaint of some courts regarding the lack of proof of the concrete damage that would be caused by disclosing the price and financing conditions





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of medicinal products. Some recent judgments point out that these damages have not been sufficiently proven. However, as mentioned above, there is still no clear case law on this issue. Therefore, we will have to wait for the judgments issued by the Administrative Chamber of the National High Court and the Supreme Court on this matter.

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