



## PRESS RELEASE No 113/24

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Judgments of the General Court in Cases T-689/21 | Auken and Others v Commission  
and T-761/21 | Courtois and Others v Commission

### The Commission did not give the public sufficiently wide access to the purchase agreements for Covid-19 vaccines

*That infringement concerns, inter alia, those agreements' provisions on indemnification, and concerns the declarations that there was no conflict of interest on the part of the members of the team who negotiated the purchase of the vaccines*

In 2020 and 2021, purchase agreements for Covid-19 vaccines were concluded between the Commission and some pharmaceutical undertakings: approximately €2.7 billion were quickly released so that a firm order could be made for more than 1 billion doses of vaccine.

In 2021, some Members of the European Parliament (MEPs) and private individuals requested, on the basis of the regulation on access to documents <sup>1</sup>, access to those agreements and to certain related documents so that they could understand their terms and conditions and satisfy themselves that the public interest was protected.

As the Commission granted only partial access to those documents, which were put online in redacted versions, the MEPs concerned and private individuals brought actions for annulment before the General Court of the European Union.

In its judgments, the General Court upholds the two actions **in part** and **annuls** the Commission's decisions in so far as they contain irregularities.

As regards **the agreements' provisions on the indemnification** of the pharmaceutical undertakings by the Member States for any damages that those undertakings would have to pay in the event of their vaccines being defective, the General Court states that a producer is liable for the damage caused by a defect in its product and its liability cannot be limited or excluded vis-à-vis the victim by a clause limiting, or providing an exemption from, liability under Directive 85/374 <sup>2</sup>. The General Court notes, however, that there is no provision in Directive 85/374 that prohibits a third party from reimbursing the damages which a producer has paid as a result of its product being defective. It states that the reason why the provisions on indemnification were incorporated into the agreements <sup>3</sup>, namely to compensate for the risks incurred by the pharmaceutical undertakings in connection with the shortening of the period for the development of the vaccines, had been endorsed by the Member States <sup>4</sup> and fell within the public domain. The General Court finds that the Commission did not demonstrate that wider access to those clauses would actually undermine the commercial interests of those undertakings. Similarly, the Commission did not provide sufficient explanations as to how access to the definitions of 'wilful misconduct' or 'best reasonable efforts', in some of the agreements, and as to how access to **the agreements' provisions on donations and resales** of the vaccines, could actually and specifically undermine those commercial interests.

As regards the protection of the privacy of individuals, relied on by the Commission to refuse, in part, access to the declarations by the members of the team who negotiated the purchase of the vaccines that they had no conflict of

interests, the General Court finds that the persons who brought the action had duly demonstrated **the specific purpose of the public interest in the disclosure of the personal data of the members of that team**. It was only by having the names, surnames and details of the professional or institutional role of the members of the team in question that they could have ascertained whether or not the members of that team had a conflict of interests. Furthermore, the Commission **did not take sufficient account of all the relevant circumstances in order to weigh up correctly the interests at issue**, related to the absence of a conflict of interests and a risk that the right of privacy of the persons concerned might be infringed.

**NOTE:** An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

**NOTE:** An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

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The full text and, as the case may be, an abstract of the judgments ([T-689/21](#) and [T-761/21](#)) are published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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<sup>1</sup> [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.

<sup>2</sup> [Council Directive 85/374/EEC](#) of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

<sup>3</sup> Commission Communication of 17 June 2020 entitled 'EU Strategy for COVID-19 vaccines' (COM(2020) 245 final).

<sup>4</sup> Third paragraph of Article 6 of the agreement of 16 June 2020 on the procurement of COVID-19 vaccines concluded between the Commission and the Member States, published on the Commission's website on 7 September 2020.