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Opinion of Advocate General in Cases C-631/24 P | Commission v Auken and Others and C-632/24 P |
Commission v Courtois and Others

Advocate General Rantos: the Commission did not grant the public sufficiently broad access to agreements for the purchase of Covid-19 vaccines

At issue are the declarations of no conflict of interest by the members of the team responsible for negotiating the purchase of vaccines and the provisions of those agreements relating to indemnification of pharmaceutical undertakings

In the context of the Covid 19 pandemic, the European Union established a centralised vaccine procurement mechanism to ensure that Member States had rapid and equitable access to those vaccines. To that end, the European Commission set up a joint negotiation team composed of some of its officials and a small number of experts from Member State, tasked with negotiating advance vaccine purchase agreements with pharmaceutical undertakings.

In 2021, MEPs and members of the public requested access to those agreements and to certain related documents.¹ The Commission granted them only partial access, redacting in particular the names of the members of the joint negotiation team and certain contractual clauses relating to the indemnification of pharmaceutical undertakings. In its view, full disclosure of that information would have infringed the privacy and the integrity of the individuals concerned, as well as the protection of the commercial interests of the undertakings concerned.

Taking the view that that access was insufficient, those MEPs and individuals brought the matter before the General Court of the European Union, seeking the annulment of the Commission's contested decisions. By two judgments of 17 July 2024,² the General Court ruled that the Commission had not granted the public sufficiently broad access to the agreements for the purchase of Covid-19 vaccines. The Commission then lodged appeals before the Court of Justice.

In his Opinion, **Advocate General Athanasios Rantos proposes that the Court reject the Commission's arguments and uphold the General Court's judgments.**

As regards, first, the disclosure of personal data relating to members of the negotiation team (in particular, surnames, first names and professional or institutional role), the Advocate General states that a natural person may obtain disclosure of such information where he or she demonstrates that such disclosure is necessary to pursue an objective in the public interest. He considers that the General Court was correct in holding that the transparency of the process of negotiating agreements for Covid-19 vaccines constitutes a specific purpose in the public interest within the meaning of EU law.³ The Advocate General further states that solely the disclosure of anonymised versions of declarations of no of conflict of interests does not make it possible for the impartiality of the members of the negotiation team to be specifically and effectively ascertained.

As regards, second, the contractual clauses relating to indemnification of the pharmaceutical undertakings, he also proposes that the Commission's arguments, whereby the Commission claims that their disclosure would undermine the commercial interests of the undertakings concerned, be dismissed.

The Advocate General considers that the Commission has not demonstrated that the disclosure of the clauses relating to indemnification would be such as to encourage abusive strategic conduct or to increase the risk of liability claims against the pharmaceutical undertakings. He emphasises, in particular, that those clauses do not affect the conditions for triggering liability of the undertakings towards injured third parties, but concern solely the reimbursement mechanisms that may apply between Member States and the undertakings following a possible finding of liability of those undertakings.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ [Regulation \(EC\) N° 1049/2001](#) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

² Judgments of the General Court of 17 July 2024 in Cases *Auken and Others* and *Courtois and Others v Commission* ([T-761/21](#) and [T-689/21](#)) (see also press release [No 113/24](#)).

³ [Regulation \(EU\) 2018/1725](#) of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.