



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Fifth Chamber)

17 July 2024*

(Access to documents – Regulation (EC) No 1049/2001 – Documents relating to the purchase of vaccines by the Commission in the context of the COVID-19 pandemic – Partial refusal of access – Exception relating to the protection of personal data – Exception relating to the protection of the commercial interests of a third party – Obligation to state reasons – Existence of a foreseeable and not purely hypothetical risk of the interest relied on being undermined – Principle of proportionality)

In Case T-761/21,

Fabien Courtois, residing at Rueil-Malmaison (France), and the other applicants whose names are set out in the annex,¹ represented by A. Durand and T. Saint-Martin, lawyers,

applicants,

v

European Commission, represented by C. Ehrbar, G. Gattinara and A. Spina, acting as Agents,

defendant,

THE GENERAL COURT (Fifth Chamber),

composed of J. Svenningsen, President, C. Mac Eochaidh (Rapporteur) and J. Martín y Pérez de Nanclares, Judges,

Registrar: H. Eriksson, Administrator

having regard to the written part of the procedure, including:

- the application lodged at the Registry of the General Court on 6 December 2021,
- the Commission's application for a declaration that there is no need to adjudicate, lodged at the Court Registry on 1 March 2022,
- the statement of modification lodged at the Court Registry on 6 April 2022,

* Language of the case: French

¹ The list of the other applicants is annexed only to the version notified to the parties.

- the Commission’s observations on the statement of modification, lodged at the Court Registry on 29 April 2022,
- the order of 7 July 2022 by which the Court reserved its decision on the application for a declaration that there is no need to adjudicate until it rules on the substance of the case,
- the reply and the rejoinder lodged at the Court Registry on 8 October and 5 December 2022, respectively,
- the order of 2 March 2023 by which the Court, by way of a measure of inquiry, ordered the Commission to produce certain documents in full,

further to the hearing on 18 October 2023, during which the applicants withdrew one of their pleas, alleging that the author of the act lacked competence,

gives the following

Judgment

- 1 By their action based on Article 263 TFEU, the applicants, Mr Fabien Courtois and the other natural persons whose names are set out in the annex, seek the annulment of Decision C(2022) 1359 final of the European Commission of 28 February 2022, adopted pursuant to Article 4 of 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 (OJ 2001 L 145, p. 43), and granting them partial access to certain documents relating to the purchase of vaccines by that institution in the context of the COVID-19 pandemic, as well as the French version of that decision, communicated on 31 March 2022.

I. Background to the dispute

- 2 On 14 April 2020, the Council of the European Union adopted Regulation (EU) 2020/521 activating the emergency support under Regulation (EU) 2016/369, and amending its provisions taking into account the COVID-19 outbreak (OJ 2020 L 117, p. 3). By that regulation, the Council activated the emergency support established by Council Regulation (EU) 2016/369 of 15 March 2016 on the provision of emergency support within the Union (OJ 2016 L 70, p. 1), as one of the measures to enable the European Union as a whole to address the crisis relating to the COVID-19 pandemic in a spirit of solidarity under the constraints caused by the quick spread of the virus and since the scale and transnational nature of the outbreak and its effects required a comprehensive response.
- 3 On 17 June 2020, the Commission published the Communication entitled ‘EU Strategy for COVID-19 vaccines’ (COM(2020) 245 final). That strategy, which was aimed at speeding up the development, manufacture and deployment of COVID-19 vaccines, was based on two pillars. The first was to secure sufficient production of vaccines in the European Union and thereby sufficient supplies for its Member States through advance purchase agreements with vaccine producers via the Emergency Support Instrument, as activated by Regulation 2020/521. The second was to adapt the European Union’s regulatory framework to the urgency at that time and

to make use of the then existing regulatory flexibility to accelerate the development, authorisation and availability of vaccines, while maintaining the standards for vaccine quality, safety and efficacy.

- 4 From that perspective, the Commission stated that Member States would participate in the process from the start and that all participating Member States would be represented in a steering board ('the steering board'), which would assist the Commission on all aspects of the advance purchase agreements before signature. It also stated that a joint negotiation team composed of the Commission and a small number of Member State experts would negotiate the advance purchase agreements ('the joint negotiation team'), which were to be concluded on behalf of all the participating Member States. The Commission also confirmed that it would be responsible for the procurement procedure on behalf of the Member States and for the advance purchase agreements concluded.
- 5 According to the Commission, the proposed framework was to be regarded as an 'insurance policy', consisting of transferring some of the risk borne by the pharmaceutical industry to the public authorities, in exchange for which the Member States were assured of equitable and affordable access to a vaccine, should one become available.
- 6 By letter of 24 May 2021 addressed to the President of the Commission and by email of the same date to the Secretariat-General of the Commission, registered on 15 June 2021 under reference GESTDEM 2021/3395, two lawyers requested, 'on behalf of the 86 000 first petitioners of the platform "<https://dejavu/legal/>" ('the petition') whom they represented and among whom were the applicants, access, pursuant to Regulation No 1049/2001, to a number of documents relating to the purchase, by the Commission and on behalf of the Member States of the European Union, of vaccines in the context of the COVID-19 pandemic ('the initial request'). The letter also contained a request for information.
- 7 In particular, the initial request related to the purchase agreements signed by the Commission with the vaccine manufacturers, to the identity of the EU representatives who had taken part in the negotiations with those manufacturers and to the declarations of direct or indirect interests between those representatives and those manufacturers, and was drafted as covering the following documents:

'1. All agreements signed by the European Commission pursuant to [Regulation 2020/521] and in particular agreements with:

Pfizer-Biontech;

Moderna;

Johnson & Johnson;

Astrazeneca.

It being understood that:

- (a) "agreement" means any letter of intent, simple order, memorandum of understanding, contract, agreement, addendum, unilateral or synallagmatic promise;

(b) each document communicated CANNOT be subject to alteration, restriction of reading, redaction of its content or concealment of any of the information which it contains, or to partial or truncated communication.

2. The list, the designation decisions and the full identity of the representatives of the European Union in the context of the negotiations of the contracts (Forename, SURNAME, professional or institutional role).

3. The declarations of direct or indirect interests between the representatives of the European Union referred to in point 2 above and the producers, investors, financiers of vaccines and other medicinal products.'

8 By letter of 30 July 2021, the Director-General of the Directorate-General (DG) for health and food safety ('DG Health') replied to the initial request and indicated that she had identified 46 documents corresponding to that request, namely four advance purchase agreements and three purchase agreements concluded by the Commission with AstraZeneca, Pfizer-BioNTech, Janssen and Moderna, 17 documents called 'draft term sheets' and 22 declarations of absence of conflict of interests. She stated that partial access had been granted to the advance purchase agreements and purchase agreements referred to above, the partially redacted versions of which had been published on one of the Commission's internet pages. The passages were redacted on the basis of the exceptions relating to the protection of privacy and the integrity of the individual, the protection of the commercial interests of the undertakings and the protection of the institutions' decision-making processes, provided for in Article 4(1)(b), the first indent of Article 4(2) and Article 4(3) of Regulation No 1049/2001. Those passages contained sensitive commercial information relating, in particular, to the undertakings, their sub-contractors and associated companies, including scientific information about the vaccines, the price, the timetable for deployment of the vaccines, production capacity, the know-how and involvement of experts and partners, business strategies and other commercially valuable information. Partial access had also been granted to the declarations of absence of conflict of interests, only a single copy of which was communicated to the applicants, those documents differing only with respect to the signatory's name and signature and the date of signature. The information was redacted on the basis of the exception relating to the protection of privacy and the integrity of the individual, provided for in Article 4(1)(b) of Regulation No 1049/2001. However, the Commission stated that access to the 17 'draft memoranda of understanding' had to be refused in full on the basis of the exceptions relating to the protection of commercial interests of the undertakings and the protection of the institutions' decision-making process, provided for in the first indent of Article 4(2) and Article 4(3) of Regulation No 1049/2001, and, for six of those 'draft memoranda of understanding', also on the basis of the exception relating to the protection of court proceedings, provided for in the second indent of Article 4(2) of that regulation.

9 On 13 August 2021, the applicants submitted, on the basis of Article 7(2) of Regulation No 1049/2001, a confirmatory application requesting the Commission to reconsider its position with regard to all the documents to which access had been refused, either in part or in full ('the confirmatory application').

10 On 24 September 2021, the Commission informed the applicants that it was still not in a position to reply to the confirmatory application. On that date, the absence of a response to the confirmatory application gave rise to an implied decision rejecting that application ('the implied rejection decision'), in accordance with Article 8(3) of Regulation No 1049/2001.

- 11 On 28 February 2022, and after consulting the pharmaceutical undertakings concerned in accordance with Article 4(4) of Regulation No 1049/2001 ('the undertakings concerned'), the Commission adopted Decision C(2022) 1359 final, pursuant to Article 4 of Regulation No 1049/2001 ('the express decision'), which was notified to the applicants in English on 1 March 2022. The Commission stated that the express decision had been notified in English in the interests of promptness and that a French translation of that decision would be communicated to the applicants shortly.
- 12 In the express decision, the Commission noted that, when assessing the confirmatory application, the Secretariat-General had reviewed DG Health's response to the initial request, that, following that review, the list of documents corresponding to the request for access to documents had been amended and that the number of documents was now 66.
- 13 In practical terms, that amendment resulted in the removal of all 17 documents previously identified by DG Health as 'draft memoranda of understanding', to which access had been refused in full in response to the initial request (see paragraph 8 above), and in the addition of new documents, to which partial access was granted, including advance purchase agreements, purchase agreements and 31 letters forming part of correspondence between the Commission and the Member States. In addition, wider access was granted to the four advance purchase agreements and the three purchase agreements to which partial access had already been granted following the initial request.
- 14 Thus, by the express decision, partial access was granted to the following advance purchase agreements and purchase agreements ('the agreements at issue'):
 - the advance purchase agreement concluded between the Commission and AstraZeneca (reference Ares(2020)4849918, document 1);
 - the advance purchase agreement concluded between the Commission and Sanofi-GSK (reference Ares(2020)5034184, document 2);
 - the advance purchase agreement concluded between the Commission and Janssen Pharmaceutica (reference Ares(2020)5806059, document 3);
 - the advance purchase agreement concluded between the Commission and BioNTech-Pfizer (reference Ares(2021)256798, document 4);
 - the advance purchase agreement concluded between the Commission and BioNTech-Pfizer (reference Ares(2021)1601544, document 5);
 - the second advance purchase agreement concluded between the Commission and BioNTech-Pfizer, Parts 1 and 2 (reference Ares(2021)3404228, document 6);
 - the advance purchase agreement concluded between the Commission and CureVac (reference Ares(2021)256728, document 7);
 - the advance purchase agreement concluded between the Commission and Moderna (reference Ares(2021)256592, document 8);

- the advance purchase agreement concluded between the Commission and Moderna (reference Ares(2021)1601566, document 9);
 - amendment I to the advance purchase agreement concluded between the Commission and Moderna (reference Ares(2021)7098313, document 10);
 - amendment II to the advance purchase agreement concluded between the Commission and Moderna (reference Ares(2021)5602046, document 11);
 - the advance purchase agreement concluded between the Commission and Novavax (reference Ares(2021)6475411, document 12);
 - the advance purchase agreement concluded between the Commission and Valneva (reference Ares(2021)7403909, document 13).
- 15 In addition, partial access was granted to the following documents:
- the minutes of the first meeting of the steering board under the joint EU approach to Covid-19 vaccines procurement, 18 June 2020 (reference Ares(2020)6521773, document 14);
 - the letter from the Austrian Federal Minister to the Member of the Commission responsible for health regarding the revised draft agreement for Covid-19 vaccines – nomination of steering board member (reference Ares(2020)3225023, document 15);
 - the letter from Czech Minister for Health concerning the agreement on vaccine procurement (reference Ares(2020)3225220, document 16);
 - the letter from Ireland concerning agreement and steering board appointee for Covid-19 vaccines advance purchase agreements (reference Ares(2020)3225086, document 17);
 - the reply from the Republic of Croatia to the letter from the Member of the Commission responsible for health to the Minister for Health (reference Ares(2020)3247430, document 18);
 - the email from the Republic of Croatia dated 15 September 2020 concerning a replacement (reference Ares(2020)3247430, document 19);
 - the letter from the Kingdom of Denmark in reply to the letter to the Member of the Commission responsible for health from the Minister for Health (reference Ares(2020)3225169, document 20);
 - the letter of response from the German Federal Minister to the Member of the Commission responsible for health concerning the draft agreement on vaccines (reference Ares(2020)3225035, document 21);
 - the reply from the Italian Republic to the draft agreement on COVID-19 vaccines (reference Ares(2020)3225266, document 22);
 - the letter to the Member of the Commission responsible for health from the Luxembourg Minister for Health (reference Ares(2020)3225162, document 23);

- the letter from the Bulgarian Minister for Health for the attention of the Member of the Commission responsible for health (reference Ares(2020)3225058, document 24);
- the email from the Republic of Cyprus concerning the nominee for the steering board (reference Ares(2020)3247154, document 25);
- the email from the Republic of Cyprus dated 1 September 2020 concerning new nominees (reference Ares(2020)4551254, document 26);
- the email from the Republic of Cyprus dated 4 September 2020 concerning the nomination of an alternative member (reference Ares(2020)3247154, document 27);
- the response from the French Republic to the letter from the Member of the Commission responsible for health for the attention of the Minister for Solidarity and Health (reference Ares(2020)3225074, document 28);
- the letter from Latvian Minister for Health to the Member of the Commission responsible for health (reference Ares(2020)3225332, document 29);
- the reply from Lithuanian Minister for Health to the letter regarding the procurement of COVID-19 vaccines (reference Ares(2020)3196684, document 30);
- the reply from the Republic of Slovenia to the letter regarding the procurement of COVID-19 vaccines (reference Ares(2020)3224440, document 31);
- the reply from the Permanent Representation of the Republic of Estonia concerning the revised draft agreement for COVID-19 (reference Ares(2020)3224457, document 32);
- the response from the Hellenic Republic to the letter from the Member of the Commission responsible for health to the Minister for Health (reference Ares(2020)3247097, document 33);
- the response from the Permanent Representation of the Kingdom of Spain to the letter of 16 June 2020 concerning the revised draft agreement on COVID-19 vaccines (reference Ares(2020)3224489, document 34);
- the response from the Portuguese Minister for Health to the letter from the Member of the Commission responsible for health concerning consent to the draft agreement on the procurement of vaccines (reference Ares(2020)3225012, document 35);
- the response from the Finnish Minister for Social Affairs and Health concerning COVID-19 vaccines (reference Ares(2020)3150427, document 36);
- the letter of response from Hungary concerning cooperation on procurement of COVID-19 vaccines (reference Ares(2020)3177860, document 37);
- the response from the Republic of Malta to the letter from the Member of the Commission responsible for health concerning the revised draft agreement on COVID-19 vaccines (reference Ares(2020)3225207, document 38);

- the response from Romania to the draft agreement on COVID-19 vaccines (reference Ares(2020)3225251, document 39);
 - the response from the Slovak Republic to the letter from the Member of the Commission responsible for health to the Minister for Health (reference Ares(2020)3247222, document 40);
 - the response from the Kingdom of Sweden to the letter from the Member of the Commission responsible for health to the Minister for Health (reference Ares(2020)3247528, document 41);
 - the response from the Kingdom of the Netherlands to the letter entitled ‘Translated agreement on COVID-19 vaccines’ (reference Ares(2020)3726636, document 42);
 - the letter from the Belgian Minister for Health (reference Ares(2020)3225236, document 43);
 - the letter of intent from the Republic of Poland with a view to joining the agreement on the COVID-19 vaccine initiative (reference Ares(2020)3225179, document 44);
 - the declarations of absence of conflict of interests, signed by each designated member of the joint negotiation team (reference Ares(2021)4288779, documents 45 to 66, one copy of which had already been communicated in response to the initial request).
- 16 In the express decision, the Commission stated that the exception relating to the protection of privacy and the integrity of the individual applied to the entirety of the agreements at issue and of the other documents listed in paragraphs 14 and 15 above and that, in the case of the agreements at issue, the exception relating to the protection of commercial interests of the undertakings also applied.
- 17 On 31 March 2022, the French version of the express decision was communicated to the applicants.

II. Forms of order sought

- 18 The applicants claim that the Court should:
- annul the implied rejection decision;
 - annul the express decision;
 - annul the French version of the express decision, of 31 March 2022;
 - order the Commission to pay the costs.
- 19 The Commission contends that the Court should:
- declare that there is no longer any need to adjudicate on the action against the implied rejection decision;
 - dismiss the action, as adapted, against the express decision as unfounded;

- dismiss the action against the French version of the express decision, of 31 March 2022, as inadmissible;
- order the applicants to pay the costs.

III. Law

A. The applicants' locus standi

- 20 In its observations on the statement of modification and in the rejoinder, the Commission expressed certain reservations about the applicants' *locus standi*. In that regard, it claimed that it was difficult to determine with certainty whether all the applicants were indeed among the 86 000 first signatories of the petition, on whose behalf the initial request had been submitted.
- 21 By a measure of organisation of procedure notified on 7 July 2022, the Court asked the applicants to produce evidence that at least one of them was among the group of 86 000 petitioners on whose behalf the initial request had been submitted, and that all the applicants did indeed have *locus standi*.
- 22 In response to that measure of organisation of procedure, the applicants produced the statement of the petitioners' electronic signatures, showing for each of them the date on which the signature of the petition had been confirmed.
- 23 In the present case, at least one of the applicants, namely Mr Courtois, duly confirmed his signature of the petition on a date prior to the submission of the initial request, that confirmation having taken place on 24 February 2021. Mr Courtois therefore has *locus standi* in the present action.
- 24 According to settled case-law, which is based on reasons of procedural economy, where one and the same action is involved, as soon as one of the applicants has *locus standi*, there is no need to consider whether or not other applicants are entitled to bring proceedings (see, to that effect, judgment of 23 September 2015, *ClientEarth and International Chemical Secretariat v ECHA*, T-245/11, EU:T:2015:675, paragraph 97 and the case-law cited).
- 25 It follows that there is no need to ascertain whether each of the other applicants whose names are set out on the statement of petitioners' signatures has *locus standi* to bring proceedings.

B. The subject matter of the dispute

- 26 The implied rejection decision, initially covered by the application for annulment in the action brought by the applicants, was replaced by the express decision after the application initiating proceedings had been lodged. That led the applicants to modify their initial form of order sought and the pleas in law in support of that form of order, in application of Article 86 of the Rules of Procedure of the General Court.
- 27 Following the modification of their form of order sought, the applicants sought annulment of the French version of the express decision communicated to them on 31 March 2022.

- 28 The Commission did not object to the applicants' modification of the form of order sought and of their pleas in law, but maintains that the French version of the express decision is merely a confirmatory translation of the challengeable act, that act being the express decision adopted on 28 February 2022 in English and notified on 1 March 2022.
- 29 At the hearing, the Commission explained that the subsequent communication of the French version of the express decision, as required by Article 41(4) of the Charter of Fundamental Rights of the European Union, the fourth paragraph of Article 24 TFEU and Article 2 of Council Regulation No 1 of 6 October 1958 determining the languages to be used by the European Economic Community (OJ English Special Edition 1952-1958, p. 59), as amended by Council Regulation (EU) No 517/2013 of 13 May 2013 (OJ 2013 L 158, p. 1), might have caused time to begin to run again for the purpose of challenging the act. For their part, the applicants asserted, in essence, that they had sought annulment of the express decision in both language versions to avoid falling into a 'procedural trap'. They emphasised that they sought to obtain a decision of the Court on the substance of their action, not on the issue of the language of the express decision, and that they had not sought to cause time to begin to run again for the purpose of lodging their statement of modification.
- 30 In that regard, where an implied decision refusing partial access has been withdrawn by the effect of an express decision taken subsequently, there is no longer any need to adjudicate on the action in so far as it is directed against that implied decision (judgment of 2 July 2015, *Typke v Commission*, T-214/13, EU:T:2015:448, paragraph 36; see also, to that effect, judgment of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraphs 88 and 89). Consequently, there is no longer any need to adjudicate on the present action in so far as it concerns the head of claim, stated in the application and in the reply, seeking annulment of the implied rejection decision.
- 31 Furthermore, the parties have not referred to any discrepancy between the French version and the English version of the express decision. Nor has the Court found such a discrepancy, apart from the third introductory paragraph in each of the language versions, explaining the circumstances in which the French translation was sent. There is thus only one express decision, adopted in two language versions.
- 32 In those circumstances, it must be considered that, in reality, the applicants' second and third heads of claim have the same objective, namely the annulment of the express decision ('the contested decision'). Those heads of claim will therefore be examined together.

C. Substance

- 33 In order to address the pleas in law raised by the applicants, the Court, by order of 2 March 2023, ordered the Commission to produce in their entirety, first, the agreements at issue to which, by the contested decision, it had partially refused access and, second, the 17 documents identified by DG Health as being the 'draft memoranda of understanding' to which access had been refused in full in response to the initial request and which, in the contested decision, were removed from the list of documents deemed to correspond to the request for access to documents, making clear that, in accordance with Article 104 of the Rules of Procedure, those documents would not be communicated to the applicants. The Commission complied with those requests within the prescribed period. The production of those documents has enabled the Court to examine the pleas put forward in the action with full knowledge of the facts.

34 In support of their action, as modified, the applicants put forward, in essence, four pleas in law, alleging, first, that the list of documents deemed to be within the scope of the request for access to documents is incomplete; second, that the two exceptions on which the Commission relies in order to justify the partial refusal of access to the requested documents do not apply; third, that the existence of an overriding public interest justifies access in full to the requested documents; and, fourth, a breach of the principle of proportionality.

1. The first plea in law, alleging that the list of documents deemed to be within the scope of the request for access to documents is incomplete

35 The arguments developed by the applicants in the context of the first plea consist of two parts.

36 By the first part, the applicants take issue with the Commission for having, in the contested decision, removed from the list of documents deemed to correspond to the request for access to documents the 17 documents identified as being ‘draft memoranda of understanding’ which had been referred to by DG Health in response to the initial request.

37 By the second part, the applicants claim that, by communicating only model acts or versions of the requested documents in which essential information had been redacted, the Commission did not observe the principle of public access to documents, misinterpreted the exceptions that can be used to oppose a request for access to documents and failed to provide explanations as to how access to those documents might undermine what it alleged to be protected interests.

38 The Commission disputes those arguments.

39 As regards the first part of the first plea, as stated in paragraphs 8, 12 and 13 above, it is apparent from the file that, in response to the initial request, DG Health had identified 46 documents corresponding to that request, including 17 documents identified as being ‘draft memoranda of understanding’ to which access was refused. Following the confirmatory application, the list of documents corresponding to the initial request was increased to 66 documents, but the 17 documents referred to above were removed, as the Commission considered that they had been included in error. In its view, they were not within the scope of the initial request, since they had to be regarded, essentially, as preparatory documents.

40 In the present case, it is sufficient to note that the applicants requested access only to the ‘agreements signed’ by the Commission (see paragraph 7 above), so that their application for access cannot be understood as also referring to the documents preparatory to the signature of those agreements, identified in the contested decision under the heading ‘draft memoranda of understanding’, which refer to mere drafts or to provisional documents for the preparation of contractual provisions to be subsequently agreed between the parties.

41 That assessment cannot be called into question by the point made in paragraph 1(a) of the request for access to documents that “‘agreement’ means any letter of intent, simple order, *memorandum of understanding*, contract, agreement, addendum, unilateral or synallagmatic promise’. All of those concepts refer to documents in respect of which a binding legal intention has been demonstrated and which necessarily reflect a firm and irrevocable commitment. None of those documents is in any sense comparable to a preparatory document, such as mere drafts or provisional documents for the preparation of contractual provisions to be subsequently negotiated and definitively agreed between the parties.

- 42 Thus, the Commission’s interpretation, in the contested decision, of the scope of the request for access to documents is not vitiated by any error of assessment.
- 43 Furthermore, under Articles 7 and 8 of Regulation No 1049/2001, the procedure for access to documents held by the institutions is carried out in two stages. Thus, the response to an initial application within the meaning of Article 7(1) of Regulation No 1049/2001 is only the first position adopted, which may be reconsidered following the lodging of a confirmatory application in accordance with Article 7(2) of that regulation (see, to that effect, judgments of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 36 and the case-law cited, and of 11 December 2018, *Arca Capital Bohemia v Commission*, T-440/17, EU:T:2018:898, paragraphs 17 to 19).
- 44 It follows that, at the stage of the contested decision, the Commission was entitled to remove the 17 documents in question from the list of documents identified as corresponding to the request for access to documents. None of those documents corresponds to an ‘agreement signed’ by the Commission.
- 45 It follows from the foregoing that the first part of the first plea must be rejected.
- 46 In so far as the applicants dispute, by the general and abstract assertions contained in the second part of the first plea, the partial or total refusal of access to certain documents or parts of documents, including the declarations of absence of conflict of interests and the agreements at issue, those assertions overlap with the second and third pleas of the action. Reference is therefore made to paragraphs 47 to 214 below.

2. The second plea, alleging that the two exceptions relied on by the Commission in order to justify refusing access to the requested documents are inapplicable

- 47 In support of the second plea, which is divided into two parts, the applicants maintain that the two exceptions on which the Commission relied in order to justify refusing access to the requested documents, namely the exception relating to the protection of privacy and the integrity of the individual and the exception relating to the protection of the commercial interests of the undertakings, were inapplicable in the present case.

(a) The first part of the second plea, alleging that the exception relating to the protection of privacy and the integrity of the individual (Article 4(1)(b) of Regulation No 1049/2001) is inapplicable

- 48 In the context of the first part of the second plea, which concerns the refusal of partial access to the declarations of absence of conflict of interests, the applicants claim that the Commission has not shown how disclosure of the identity of the members of the joint negotiation team would specifically undermine the privacy or the integrity of those members. In that regard, the applicants maintain that the Commission, acting on a mere presumption and without weighing up the interests involved, reversed the burden of proof.
- 49 The applicants maintain that the need to transmit the requested data, which are contained in the declarations of absence of conflict of interests to which partial access was granted, results from the need to verify that there was no conflict of interests on the part of the persons who negotiated the

agreements and from the right and the enhanced need for information and transparency of citizens, especially in the case of the members of the joint negotiation team, who were entrusted with a public mandate or at least a task in the public service.

- 50 The Commission disputes those arguments.
- 51 The Commission contends that the considerations put forward by the applicants in the confirmatory application do not suffice to show that communication of the personal data at issue was necessary in the present case. It adds that, following disclosure of the anonymised versions of the declarations of absence of conflict of interests, the applicants were in a position to ascertain that the public servants concerned did indeed fulfil the obligations linked with every procedure applicable to EU public procurement. It also maintains that it did not in any way reverse the burden of proof, but that, when there are reasons to believe, as in the present case, that the disclosure at issue might undermine the legitimate interests of the persons concerned, there is no need to communicate data such as those requested, in particular in the case of public servants having no decision-making power within their institution or not occupying a senior position. In addition, it observes that the applicants put forward new arguments in the statement of modification to establish the need to communicate the personal data which the Commission was not in a position to examine at the time when the contested decision was adopted.
- 52 It should be borne in mind that, under Article 15(3) TFEU, any citizen of the European Union, and any natural or legal person residing or having its registered office in a Member State, is to have a right of access to documents of the EU institutions, bodies, offices and agencies, subject to the principles and the conditions to be defined in accordance with the ordinary legislative procedure. Regulation No 1049/2001 is designed, as stated in recital 4 and Article 1 thereof, to confer on the public as wide a right of access as possible to the documents of the institutions (judgments of 28 June 2012, *Commission v Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 111, and of 28 June 2012, *Commission v Agrofert Holding*, C-477/10 P, EU:C:2012:394, paragraph 53; see also, to that effect, judgment of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 40).
- 53 The principle that the widest possible public access is to be granted to documents is nonetheless subject to certain limits based on reasons of public or private interest. Regulation No 1049/2001, and in particular recital 11 and Article 4 thereof, provides for a regime of exceptions whereby the institutions and bodies are required not to disclose documents where disclosure would undermine one of those interests (see, to that effect, judgments of 28 June 2012, *Commission v Éditions Odile Jacob*, C-404/10 P, EU:C:2012:393, paragraph 111; of 28 June 2012, *Commission v Agrofert Holding*, C-477/10 P, EU:C:2012:394, paragraph 53; and of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 40).
- 54 Since the exceptions provided for in Article 4 of Regulation No 1049/2001 derogate from the principle that the widest possible public access is to be granted to documents, they must be interpreted and applied strictly (see, to that effect, judgments of 21 July 2011, *Sweden v MyTravel and Commission*, C-506/08 P, EU:C:2011:496, paragraph 75, and of 3 July 2014, *Council v in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 48).
- 55 According to Article 4(1)(b) of Regulation No 1049/2001, the EU institutions are to refuse access to a document where disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.

- 56 According to the case-law, it follows that, where an application is made seeking access to personal data, within the meaning of Article 3(1) of 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ 2018 L 295, p. 39), the provisions of that regulation become applicable in their entirety (see, by analogy, judgment of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, C-615/13 P, EU:C:2015:489, paragraph 44 and the case-law cited).
- 57 Thus, personal data may be transmitted to a third party on the basis of Regulation No 1049/2001 only where that transmission fulfils the conditions laid down in Article 9(1)(a) or (b) of Regulation 2018/1725 and constitutes lawful processing in accordance with the requirements of Article 5 of that regulation (see, by analogy, judgment of 2 October 2014, *Strack v Commission*, C-127/13 P, EU:C:2014:2250, paragraph 104).
- 58 In that regard, according to Article 9(1)(b) of Regulation 2018/1725, personal data are only to be transmitted to recipients established in the European Union other than EU institutions and bodies if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests.
- 59 It therefore follows from the very wording of Article 9(1)(b) of Regulation 2018/1725 that the transmission of personal data is made subject to a number of cumulative conditions being fulfilled.
- 60 It is first of all for the party seeking access to demonstrate the need to transmit personal data for a specific purpose in the public interest. In order for that condition to be fulfilled, it must be demonstrated that the transmission of personal data is the most appropriate of the possible measures for attaining the objective pursued by the party applying for access and that it is proportionate to that objective, which means that the party applying for access must submit express and legitimate reasons (see judgment of 19 September 2018, *Chambre de commerce et d'industrie métropolitaine Bretagne-Ouest (port de Brest) v Commission*, T-39/17, not published, EU:T:2018:560, paragraph 42 and the case-law cited). It follows that to apply the condition as to the necessity of the transmission of personal data for a specific purpose in the public interest is to recognise the existence of an exception to the rule laid down by Article 6(1) of Regulation No 1049/2001 that the party applying for access is not obliged to state reasons for the application for access (judgment of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 55).
- 61 Only if such access is demonstrated to be necessary is it then for the institution concerned to determine that there is no reason to assume that the transmission might prejudice the legitimate interests of the data subject and, in such a case, demonstrably to weigh up the various competing interests in order to evaluate the proportionality of the transmission of personal data sought (see, to that effect, judgment of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, C-615/13 P, EU:C:2015:489, paragraph 47 and the case-law cited).
- 62 It is in the light of those considerations that the present part of the plea must be analysed.

- 63 In the present case, the Commission considered that the applicants had not established any specific need in the public interest for the transmission of the personal data, in particular ‘given the disclosure of the anonymised version of the declarations of absence of conflicts of interests’. It added that there were reasons to believe that disclosure of the personal data would undermine the legitimate interests of the data subjects, since there was a real and not hypothetical risk that disclosure would harm their privacy and subject them to unsolicited external contacts, given the sensitive nature of the subject matter.
- 64 The Commission therefore concluded that, in accordance with Article 4(1)(b) of Regulation No 1049/2001, access to the personal data could not be granted.
- 65 It must therefore first of all be determined whether the applicants have demonstrated the need to transfer the personal data relating to the members of the joint negotiation team.
- 66 In that regard, it must be accepted that the confirmatory application for access mentioned only the fact that the ‘staff, officials, agents or others’ of the European Union who negotiated the agreements at issue were ‘entrusted with a task in the public interest’ of which they could not fail to be aware given the media coverage of the subject matter, and that transparency was an essential part of a pursuit in the public interest given the exceptional nature of the implementation of the emergency procedure and of the conclusion of the agreements at issue. Thus, the confirmatory application could have revealed more explicitly that the applicants were pursuing the objective of ascertaining the impartiality of the members of the joint negotiation team.
- 67 Nonetheless, it must be observed that the confirmatory application for access repeated the words of the initial request. Furthermore, in the initial request, the applicants put a number of questions to the Commission in order to ascertain ‘who the persons authorised by the Commission ... to negotiate with the vaccine manufacturers [were]’ and ‘what the links of direct or indirect interests between the vaccine manufacturers, the investors or [the] financiers linked with the parties [were]’.
- 68 Consequently, when the applicants requested that information about the identity of those members and about any links which they might have with the vaccine manufacturers be transmitted to them, the Commission was in a position to understand that the parties applying for access were pursuing the objective referred to in paragraph 66 above, namely to ascertain the impartiality of the members of the joint negotiation team.
- 69 Accordingly, it must be held that the applicants did indeed put forward arguments to demonstrate the need for the transfer of the personal data. The Commission’s arguments alleging that the applicants first relied on such a specific purpose in the public interest only before the Court must therefore be rejected.
- 70 It may be seen from recital 2 of Regulation No 1049/2001 that openness enables the EU institutions to have greater legitimacy and to be more effective and more accountable to EU citizens in a democratic system (see judgment of 22 January 2020, *PTC Therapeutics International v EMA*, C-175/18 P, EU:C:2020:23, paragraph 53 and the case-law cited). Furthermore, according to recital 28 of Regulation 2018/1725, a specific purpose in the public interest, within the meaning of Article 9(1)(b) of that regulation, could relate to the transparency of EU institutions and bodies.

- 71 In that context, the transparency of the process followed by the Commission in the negotiations with the COVID-19 vaccine manufacturers and in the conclusion of the agreements at issue on behalf of the Member States might constitute a specific purpose in the public interest, within the meaning of Article 9(1)(b) of Regulation 2018/1725, in so far as it may well help to increase EU citizens' confidence in the vaccination strategy promoted by the Commission and, thereby, counter the dissemination of false information as regards the circumstances in which those agreements were negotiated and concluded (see, to that effect, judgments of 7 September 2022, *Saure v Commission*, T-448/21, not published, EU:T:2022:525, paragraph 45, and of 7 September 2022, *Saure v Commission*, T-651/21, not published, EU:T:2022:526, paragraph 46), in particular by enabling EU citizens to be satisfied that there was no conflict of interests between the members of the joint negotiation team and the vaccine manufacturers.
- 72 In addition, the general nature of the justification for the transfer of personal data has no direct effect on whether the transfer is necessary for the purpose of attaining the aim pursued by the party requesting access to the data (judgment of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 61).
- 73 In the light of those factors, the Court considers that the applicants sufficiently stated the specific purpose in the public interest which they were pursuing and also the need for the transmission of the personal data in question. It was only by having in their possession the surnames, forenames and professional or institutional roles of the members of the joint negotiation team that the applicants could have ascertained that those members were not in a conflict-of-interests situation.
- 74 Next, as regards the risk that the privacy of the persons concerned would be harmed, it must be noted that the Commission maintained that disclosure of the identities of the members of the joint negotiation team was likely to harm the privacy of the persons concerned, by subjecting them to unsolicited external contacts, especially in the light of the sensitive nature of the subject matter with which they were dealing.
- 75 In that regard, it is appropriate to point to a contradiction in the arguments put forward by the applicants in order to challenge that assessment. On the one hand, they maintain that, because of their task in the public interest, disclosure of the identity of the members of the joint negotiation team would not entail any risk of unsolicited external contacts, while on the other hand they assert that, by reason of the very nature of their duties, those members are subject to unsolicited external approaches.
- 76 In any event, it must be stated that the Commission did not rely on the nature of the task carried out by the members of the joint negotiation team to support its view that they would be subject to unsolicited external contacts, but relied on their involvement in the subject matter with which they were dealing, namely the conclusion of agreements for the production and purchase of COVID-19 vaccines.
- 77 The applicants do not dispute that the particular context in which the members of the joint negotiation team were required to work, namely a period characterised by heavy demand for COVID-19 vaccines and, at the same time, by the distrust of some EU citizens in the vaccination strategy promoted by the Commission. In those circumstances, the exposure of the members of the joint negotiation team to unsolicited external contacts following disclosure of their identities was not merely hypothetical.

- 78 The applicants' assertion that they did not seek disclosure of information about the addresses of the members of the joint negotiation team or information covered by Article 10 of Regulation 2018/1725 cannot call into question that conclusion, since disclosure of a person's identity makes it possible to carry out searches in connection with that person and thus to find such information.
- 79 As the applicants demonstrated the need for the transfer of the personal data and the Commission correctly considered that there was a risk that the privacy of the persons concerned would be harmed, the Commission was required to weigh up the interests involved.
- 80 In that regard, it is clear from the contested decision that the Commission took into consideration, first, the technical role in the award process played by the members of the joint negotiation team and, second, the fact that the applicants had had access to information through the partial disclosure of the subject matter discussed in the contractual documents and through the disclosure of the anonymised version of the declarations that there was no of conflict of interests and that confidentiality had been observed.
- 81 However, in doing so, first, the Commission did not explain how the fact that the role of the members of the joint negotiation team was solely technical should take precedence over the objective which the applicants had set themselves, namely to ascertain that the members of the joint negotiation team had no conflict of interests.
- 82 In that regard, the contested decision does not expressly reveal the additional considerations relied on in the present action, relating, in essence, to the weighing up of the various competing interests and, in particular, to the position that the members of the joint negotiation team might occupy in a hierarchy (see paragraph 51 above).
- 83 Second, it is true that the applicants were aware, in particular, of the content of the declaration of absence of conflict of interests signed by the members of the joint negotiation team.
- 84 However, in the absence of disclosure of the identity of the members of the joint negotiation team, the specific purpose in the public interest pursued by the applicants, consisting in enabling EU citizens to be satisfied that there was no conflict of interests between the members of that team and the vaccine manufacturers, cannot be achieved. The mere fact that all the members of the joint negotiation team signed a declaration of absence of conflict of interests does not in itself permit a citizen to satisfy himself or herself that those members have performed their task in complete independence.
- 85 It follows from all of the foregoing that, contrary to the view expressed by the Commission in the contested decision, the applicants demonstrated the need to obtain access to the surnames and forenames of the members of the joint negotiation team in order to achieve a specific purpose in the public interest and, accordingly, that the first of the conditions required by Article 9(1)(b) of Regulation 2018/1725 in order to authorise the transmission of that information is fulfilled in this case. Furthermore, the Commission also failed to take the various circumstances of the present case sufficiently into account in order to weigh up correctly the interests involved.
- 86 However, disclosure of the dates on which those declarations of absence of conflict of interests were signed, and of the handwritten signatures of the members of the joint negotiation team, does not appear to be necessary for the purpose of ascertaining their impartiality.
- 87 The Commission's arguments do not call into question that conclusion.

- 88 First, unlike in the present case, the applicant in the case that gave rise to the judgment of 6 April 2022, *Saure v Commission* (T-506/21, not published, EU:T:2022:225), had not justified his request for access by the need to be satisfied that there was no conflict of interests between the members of the joint negotiation team, some of whom were on the steering board, and the vaccine manufacturers. The arguments which the Commission derives from that judgment must therefore be rejected.
- 89 Second, the Commission cannot properly take issue with the applicants for not having mentioned any specific factor that would enable them to question the independence of the members of the joint negotiation team.
- 90 It is true that the Commission is correct to observe that, in the judgment of 16 July 2015, *ClientEarth and PAN Europe v EFSA* (C-615/13 P, EU:C:2015:489), it was only after finding that the applicants' claims were supported by specific elements referring to links between a certain number of experts chosen by the European Food Safety Authority (EFSA) and industrial lobbies – links which specifically gave rise to the allegations of partiality made against EFSA and its experts – that the Court of Justice annulled the EFSA decision refusing access on behalf of the experts who had submitted individual comments in the context of the production of a draft guidance document.
- 91 However, in the case that gave rise to that judgment, the applicants had been informed of the names of the experts concerned and had obtained access to their declarations of interests (see, to that effect, judgment of 16 July 2015, *ClientEarth and PAN Europe v EFSA*, C-615/13 P, EU:C:2015:489, paragraph 58). In the present case, the applicants do not know the identities of the experts designated by the Member States represented in the joint negotiation team, and they were therefore not in a position to adduce evidence that would allow the impartiality of those experts to be put in doubt.
- 92 It follows from the foregoing that the first part of the second plea must be upheld.

(b) The second part of the second plea, alleging that the exception relating to the protection of the commercial interests of the undertakings (the first indent of Article 4(2) of Regulation No 1049/2001) is inapplicable

- 93 By the second part of the second plea concerning the agreements at issue, the applicants claim that the exception relating to the protection of the commercial interests of an undertaking does not preclude disclosure of certain information redacted on the basis of that exception, concerning in particular legal and scientific elements consisting of the provisions relating to the properties of the vaccines, the provisions relating to product quality control methods, the provisions relating to liability and indemnification and the provisions relating to subcontractors.
- 94 The applicants thus take issue with the Commission for having incorrectly relied in the contested decision on various arguments, namely the sensitive nature of the information, the fear of negative effects linked with the disclosure of the data, the fear of legal actions, the risk of giving a competitive advantage to certain vaccine manufacturers or the reputational damage to vaccine manufacturers who concluded the agreements at issue with the Commission among consumers and trading partners, in order to oppose disclosure of the provisions referred to in paragraph 93 and, in particular, those relating to indemnification.

- 95 The Commission contends that those assertions do not call into question the reasoning set out in the contested decision.
- 96 According to the first indent of Article 4(2) of Regulation No 1049/2001, the EU institutions are to refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, unless there is an overriding public interest in disclosure.
- 97 In that context, it should be noted that it is apparent from the very wording of Article 4(2) of Regulation No 1049/2001 that any undermining of the interests concerned is capable of justifying the application, as the case may be, of one of the exceptions listed therein, without it being necessary for that interference to reach a particular threshold of seriousness (judgment of 22 January 2020, *PTC Therapeutics International v EMA*, C-175/18 P, EU:C:2020:23, paragraph 90).
- 98 It is apparent from the case-law, in addition to that already referred to in paragraphs 52 to 54 above, that the system of exceptions provided for in Article 4 of Regulation No 1049/2001, particularly in Article 4(2), is based on a weighing of the opposing interests in a given situation, that is to say, on the one hand, the interests which would be favoured by the disclosure of the documents in question and, on the other, those which would be jeopardised by such disclosure. The decision taken on a request for access to documents depends on which interest must prevail in the particular case (judgments of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 42, and of 23 September 2015, *ClientEarth and International Chemical Secretariat v ECHA*, T-245/11, EU:T:2015:675, paragraph 168).
- 99 As regards the concept of commercial interests, it must be observed that Regulation No 1049/2001 does not define that concept, save in so far as it states that those interests may cover the intellectual property of a specific natural or legal person. It should be borne in mind, moreover, that in order to refuse access to a document disclosure of which has been requested, it is not sufficient, in principle, that that document should relate to a commercial activity, but the institution concerned must explain how access to that document might specifically and actually undermine the commercial interests and show how the risk of the interests being undermined is reasonably foreseeable and not merely hypothetical (see, to that effect, judgments of 3 July 2014, *Council v in't Veld*, C-350/12 P, EU:C:2014:2039, paragraph 52 and the case-law cited, and of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, EU:T:2018:97, paragraphs 103 to 105 and the case-law cited).
- 100 Furthermore, it must be noted that it is not possible to regard all information concerning a company and its business relations as requiring the protection which must be guaranteed to commercial interests under the first indent of Article 4(2) of Regulation No 1049/2001 without frustrating the application of the general principle of giving the public the widest possible access to documents held by the institutions (see judgment of 9 September 2014, *MasterCard and Others v Commission*, T-516/11, not published, EU:T:2014:759, paragraph 81 and the case-law cited). However, that protection may cover sensitive commercial information, such as information relating to undertakings' commercial strategies, their sales figures, market shares or commercial relations (see, to that effect, judgments of 28 June 2012, *Commission v Agrofert Holding*, C-477/10 P, EU:C:2012:394, paragraphs 54 to 56, and of 9 September 2014, *MasterCard and Others v Commission*, T-516/11, not published, EU:T:2014:759, paragraphs 82 and 83).

- 101 Last, in the context of the application of the provisions of Regulation No 1049/2001, the purpose of the obligation on the institution to state the reasons for its decision refusing to grant access to a document is, first, to provide the person concerned with sufficient information to make it possible to determine whether the decision is well founded or whether it is vitiated by an error which may permit its validity to be contested and, second, to enable the Courts of the European Union to review the lawfulness of the decision. The extent of that obligation depends on the nature of the measure at issue and the context in which it was adopted (see judgment of 6 February 2020, *Compañía de Tranvías de la Coruña v Commission*, T-485/18, EU:T:2020:35, paragraph 20 and the case-law cited).
- 102 It is in the light of those considerations that the present part of the plea must be analysed.
- 103 In that context, in so far as the applicants claim that the exception relating to the protection of commercial interests could not be applied because of the context in which the agreements at issue had been concluded, the Court observes that the undertakings concerned, which are all private pharmaceutical companies, pursue commercial activities in the context of which they are subject to competition within the internal market and on international markets and that context means that they must preserve their interests on those markets.
- 104 It follows from the case-law that while an undertaking whose capital is owned by public authorities may have commercial interests that may qualify for protection in the same way as those of a private company (see, to that effect, judgment of 27 February 2018, *CEE Bankwatch Network v Commission*, T-307/16, EU:T:2018:97, paragraph 108), the same must apply, for even stronger reasons, to a private company, even though it contributes to the achievement of tasks of public interest (judgment of 5 December 2018, *Falcon Technologies International v Commission*, T-875/16, not published, EU:T:2018:877, paragraph 49).
- 105 Thus, the mere fact that the undertakings concerned participated, by means of down payments or advance payments from public funds, in carrying out tasks in the public interest, in particular the development of COVID-19 vaccines, is not, in itself, capable of supporting the conclusion that their commercial interests are not deserving of protection.
- 106 In addition, the Court observes that the agreements at issue are agreements of definite importance, likely to contain sensitive confidential information relating to the undertakings concerned and their business relations within the meaning of the case-law cited in paragraph 100 above.
- 107 It follows that the context in which the agreements at issue were concluded does not preclude the application of the exception provided for in the first indent of Article 4(2) of Regulation No 1049/2001.

(1) The partial refusal of access to the provisions on the properties of the vaccines and on quality control

- 108 By a first complaint, the applicants dispute, in essence, the sufficiency of the reasons stated in the contested decision and their validity as justification for the partial refusal of access to the provisions on the properties of the vaccines and on quality control, based on the exception relating to the protection of commercial interests provided for in the first indent of Article 4(2) of Regulation No 1049/2001.

- 109 In that context, the applicants emphasise the fact that Annex V, concerning the properties of the vaccines, was removed from document 13 and that, as regards quality control, provision I.6.13, entitled ‘Quality tests and checks’, was removed from documents 4 and 6.
- 110 The applicants assert that the provisions on the properties of the vaccines and on quality control methods were redacted although there was no commercial interest capable of justifying their redaction. Furthermore, the Commission did not demonstrate how disclosure of the vaccine quality control methods would have the effect of undermining the industrial capacity of the undertakings concerned. Disclosure of those provisions would make it possible to provide the necessary vaccine quality guarantees and to pursue the objectives of the European Union. In the applicants’ submission, the protection of the commercial or competitive interests of the undertakings in question cannot prevail over the right to life.
- 111 The Commission disputes those arguments.

(i) The statement of reasons in the contested decision

- 112 In paragraph 2.2.2 of the contested decision, which deals with the risks relating to the organisation and the industrial capacity of the undertakings concerned, the Commission stated that certain redacted passages contained elements which are not public and which are directly linked with the know-how relating to the production of the vaccine. If the details concerning the product and the technology developed by the undertakings concerned were disclosed, they could be exploited by their competitors and, in particular, by those that would use the same technology to design their own products, nullifying their industrial efforts, harming their market position and jeopardising the very implementation of the agreements at issue.
- 113 By way of specific examples of provisions that are in that category, the Commission referred to certain parts of the definition of the ‘product’ in document 7 and of the definition of the ‘vaccine’ or of an ‘adapted vaccine’ in document 5. It also highlighted the information in the annexes to the agreements at issue, concerning the ‘specification of the product’, including Annex IV to document 7. Last, it indicated the provisions linked with the delivery process where it would be possible to glean from them technical details about the production process. In that context, it referred, by way of examples, to a provision on storage, transport and acceptance of the product in document 4 and a document attached to that document concerning the delivery specifications and the cold chain, and also all of the second part of document 6.
- 114 In addition, the Commission stated that when the applicability of the exception relating to the protection of commercial interests to the redacted information was assessed, various factors had been taken into consideration, notably the particular situation of each undertaking concerned, its characteristics, its relations with other commercial players and its market and business strategies and the use which its competitors would be able to make of the information disclosed.
- 115 It follows from those considerations that the Commission provided explanations, together with specific examples, without disclosing the content of the redacted information in such a way as to deprive the exception relating to the protection of commercial interests of its essential purpose, as regards the nature of the redacted provisions dealing with the know-how of the undertakings concerned and the conditions of the manufacture of the vaccines. Those explanations cover the provisions relating to the ‘properties’ of the vaccines and ‘quality control’ in so far as the latter encompasses the conditions of the manufacture of the vaccines, to which the applicants refer.

- 116 Likewise, the Commission explained in detail how their disclosure might specifically and actually undermine the commercial interests of those undertakings.
- 117 Furthermore, although the Commission is required to set out the reasons justifying the application to the particular case of one of the exceptions to the right of access provided for by Regulation No 1049/2001, it is not required to provide more information than is necessary in order for the person requesting access to understand the reasons for its decision and for the Court to review the legality of that decision (judgment of 30 January 2008, *Terezakis v Commission*, T-380/04, not published, EU:T:2008:19, paragraph 119).
- 118 The Court notes that it was only at the stage of the statement of modification that the applicants referred to the provisions on the properties of the vaccines, in particular in document 13, and the provision entitled ‘Tests and quality control’, in documents 4 and 6.
- 119 It follows that the reasons stated in the contested decision enable the applicants to understand the reasons that led the Commission to redact, in the agreements at issue, the provisions concerning information that was commercially sensitive and not in the public domain, linked with the know-how of the undertakings concerned and the conditions of the manufacture of the vaccines, including the properties of the vaccines, and enable the Courts of the European Union to review the legality of those redactions, within the meaning of the case-law referred to in paragraphs 101 and 117 above.
- 120 The complaint alleging that the reasoning in the contested decision is insufficient in that respect must, therefore, be rejected.

(ii) The validity of the statement of reasons in the contested decision

- 121 As regards the validity of the reasons stated in the contested decision as justification for the partial redaction of the information at issue, it must be determined whether the Commission provided plausible explanations as to how access to the redacted information could specifically and actually undermine the protection of the commercial interests of the undertakings concerned and whether the risk that those interests would be undermined might be considered to be reasonably foreseeable and not purely hypothetical (see, to that effect, judgment of 25 November 2020, *Bronckers v Commission*, T-166/19, EU:T:2020:557, paragraph 58).
- 122 In accordance with the case-law cited in paragraphs 97 and 99 above, the Commission is not required to establish the existence of a definite risk that the protection of the commercial interests of the undertakings concerned will be undermined.
- 123 It is sufficient that the contested decision contains tangible elements that would support the conclusion that risk that the commercial interests of the undertakings concerned would be undermined was, on the date on which it was adopted, reasonably foreseeable and not purely hypothetical and that it makes mention of the existence, on the date on which it was adopted, of objective reasons on the basis of which it could be reasonably foreseen that those interests would be undermined if the information requested by the applicants were disclosed (see, to that effect, judgment of 7 June 2011, *Toland v Parliament*, T-471/08, EU:T:2011:252, paragraphs 78 and 79).

- 124 In the present case, as indicated in paragraph 112 above, it is apparent from the contested decision that the Commission refused full access to provisions relating to the know-how of the undertakings concerned, to avoid the risk of revealing commercially sensitive elements that might be exploited by their competitors, at a time characterised by high demand for COVID-19 vaccines and in a highly competitive context.
- 125 Having consulted the full version of document 13, the Court notes that Annex V to that document is entitled ‘Target product profile’ and outlines the characteristics of a vaccine which is still under development. Furthermore, it is in the public domain that the vaccine developed by that undertaking did not obtain market authorisation until after the date on which the contested decision was adopted. In addition, it is apparent from the answer to a written question which the Court put to the Commission that deliveries under that advance purchase agreement did not commence until the third quarter of 2022, namely after the date on which the contested decision was adopted.
- 126 Furthermore, the Court notes, as the Commission observes, that provision I.6.13, entitled ‘Tests and quality control’, redacted in documents 4, 5 and 6, relates not to the EU regulatory requirements concerning the quality control of a medicine, but to a contractual commitment concerning the internal organisation of that manufacturer in connection with the conditions of the manufacture of the vaccine. In any event, it is apparent from provision I.6.5 of those documents, to which the Commission granted access, that the undertaking concerned is required to comply with all the conditions laid down in the market authorisations for its products.
- 127 It follows that the Commission was correct to take the view, in the contested decision, that full disclosure of the provisions concerning the know-how of the undertakings concerned could provide their competitors with commercially sensitive information about their products and technologies (see, to that effect, judgment of 12 October 2022, *Saure v Commission*, T-524/21, EU:T:2022:632, paragraphs 99 to 102).
- 128 It follows from the foregoing that the Commission’s explanations in the contested decision concerning the existence of a reasonably foreseeable and not hypothetical risk that the protection of the commercial interests of the undertakings concerned would be undermined in the event of disclosure of provisions on the know-how of those undertakings and, in particular, in the event of disclosure of Annex V to document 13 and provision I.6.13 of documents 4, 5 and 6, are well founded.
- 129 In the light of the foregoing, the first complaint in the second part of the second plea must be rejected.

(2) The partial refusal of access to the provisions on indemnification

- 130 By a second complaint, the applicants dispute, in essence, the sufficiency of the reasons stated in the contested decision and their validity as justification for the partial refusal of access to the provisions on liability and indemnification on the basis of the exception relating to the protection of commercial interests provided for in the first indent of Article 4(2) of Regulation No 1049/2001.

- 131 First, the applicants dispute the considerations relied on in the contested decision, to the effect that full disclosure of the provisions on liability and indemnification could give rise to multiple unreasonable and unjustified legal actions. The applicants maintain that those considerations are hypothetical and speculative, as demonstrated by the use of the conditional in the contested decision.
- 132 Second, the applicants claim that the hypothesis that full disclosure of the provisions in question would reveal to competitors of the undertaking concerned the ‘weak points’ of the coverage of its liability and would provide those competitors with a competitive advantage has not been demonstrated and cannot prevail over the right to life and to compensation for harm caused by any defective vaccines.
- 133 Third, the applicants dispute that full disclosure of the provisions in question would have an impact on the general reputation of the undertakings concerned. The evidence adduced by the Commission is hypothetical. The reputation of the undertakings concerned would be harmed by the ‘imputation of a non-compensable character’ to damage resulting from defective products and by the non-disclosure of those provisions. Furthermore, the requested documents relate more to legal and scientific matters than to information of commercial interest.
- 134 The Commission disputes those arguments.
- 135 The Commission contends that the provisions in question have the same economic and financial importance as any other cost factor for the undertaking concerned and were the subject of individual negotiations.
- 136 First, the Commission maintains that full disclosure of the provisions in question would increase the number of actions for damages brought against the undertaking concerned, as it could encourage actions for damages and give claimants more arguments on the basis of which they could try to establish that the vaccine is defective. The Commission emphasises that, contrary to the applicants’ assertions, the protected commercial interest does not consist in exempting the undertakings concerned from liability.
- 137 Second, the Commission maintains that the contested decision explains, to the requisite legal standard, the reasons why full disclosure of the provisions in question would have negative commercial repercussions for the undertakings concerned, in particular by procuring a competitive advantage for competitors and by revealing the extent of the financial risk accepted by the undertakings concerned under the agreements at issue.
- 138 Third, the Commission disputes the applicants’ arguments that the legal or scientific matters have no commercial interest. In that context, it emphasises that the conditions of the financial commitments provided for in the agreements at issue or the scientific data may be commercially sensitive.

(i) The statement of reasons in the contested decision

- 139 In the present case, in paragraph 2.2.1 of the contested decision, the Commission stated that the information redacted under the exception relating to the protection of commercial interests, provided for in the first indent of Article 4(2) of Regulation No 1049/2001, contained

commercially sensitive elements regarding, inter alia, liability and indemnification. It stated that full disclosure of such information could reveal, to the competitors of the undertaking concerned, the precise profit for that undertaking resulting from the negotiation.

- 140 Next, in paragraph 2.2.4, first of all, the Commission addressed, in essence, the non-contractual liability of the undertakings concerned vis-à-vis third parties, inter alia for adverse drug reactions arising from use of the vaccine, and the provisions on possible indemnification, that is to say the reimbursement, by the Member States, of the undertakings concerned, should those undertakings be ordered to pay damages to third parties on the basis of their non-contractual liability. After that, it addressed various aspects of the contractual liability of the undertakings concerned.
- 141 Thus, the Commission stated that full disclosure of the provisions in question risked undermining the commercial interests of those undertakings in three respects.
- 142 First, precise knowledge of the limits of the liability of the undertaking concerned would allow for strategic behaviour against it, in so far as it could be faced with the economic consequences of multiple sets of legal proceedings, brought unreasonably and without justification with the sole aim of receiving compensation linked to use of its vaccine. Second, full disclosure of the provisions on the indemnification of the undertakings concerned by the Member States, in particular the provisions defining the exact conditions under which indemnification by the Member State is excluded, would inevitably reveal to competitors of the undertaking concerned, including those not producing vaccines, the ‘weak points’ of the coverage of its liability and would provide them with a competitive advantage which they could exploit. Third, precise knowledge of the limits of the liability of the undertaking concerned would also have an impact on its general reputation with consumers and potential business partners. According to the Commission, those reasons explain why certain passages relating to derogation from the provision on indemnification, namely the conditions under which a given undertaking will not be indemnified, cannot be disclosed. In that context, it referred, by way of example, to the redactions in Article I.12 of Document 4.
- 143 Next, the Commission stated that certain provisions regarding contractual liability have a commercial dimension that was assessed and negotiated with the undertaking concerned, the disclosure of which would reveal to that undertaking’s competitors information on its internal capacity and strategy, in particular in so far as that information would make it possible to ascertain precisely the costs which a termination of contract could entail for that undertaking. The Commission illustrated its comments with examples of specific provisions.
- 144 The Commission stated that the redacted information was commercially sensitive. First, disclosure of that information would make it possible to ascertain precisely the costs which a breach of contract could entail for the undertakings concerned. Second, disclosure of that information could be detrimental to the undertakings concerned, since it would give their competitors a very realistic idea of the actual profits generated by the agreement at issue, when, at the time the contested decision was adopted, those undertakings were negotiating agreements with purchasers from third countries for the delivery of COVID-19 vaccines, and competition in that regard was taking place on a global market. The Commission also stated that that potential conflict with the commercial interests of the undertakings concerned would be all the more damaging because certain agreements were on the point of being implemented, as was the case, at the time the contested decision was adopted, for example, with Documents 5 and 6.

- 145 Lastly, the Commission stated that, in that context, the global market in which the undertakings concerned operated had to be taken into consideration in assessing the effects of disclosing the provisions in question under Regulation No 1049/2001. It stated that, when assessing the applicability of the exception relating to the protection of commercial interests, various factors had been taken into consideration, in particular the specific market situation of each vaccine manufacturer, that manufacturer's characteristics, its relationships with other commercial operators, its market and business strategies and the use that its competitors could make of the information disclosed. It concluded that full disclosure of the agreements concluded with the undertakings concerned would undermine the latter's commercial interests, essentially by undermining their competitiveness on the global markets.
- 146 It follows from those considerations that the Commission provided explanations as to the commercially sensitive nature of the information contained in the provisions on liability and indemnification. Similarly, the Commission explained, to the requisite legal standard, how, in its view, full disclosure of those provisions could specifically and actually undermine the commercial interests of the undertakings concerned, whether between them or between them and third parties with which they might be in competition.
- 147 It follows that the grounds of the contested decision enable the applicants to understand the specific reasons which led the Commission to redact, in part, in the agreements at issue, the provisions on both the contractual and non-contractual liability of the undertakings concerned, and the provisions on the possible indemnification by the Member States of any obligations incurred by the undertakings concerned should those undertakings' non-contractual liability be put in issue, and the Courts of the European Union to review the legality of those redactions, within the meaning of the case-law referred to in paragraphs 101 and 117 above.
- 148 Accordingly, the complaint alleging that the statement of reasons in the contested decision is inadequate must be rejected.

(ii) The merits of the statement reasons in the contested decision

- 149 As regards the merits of the grounds put forward by the Commission to justify the partial redaction of the provisions on liability and indemnification, it is necessary to ascertain whether, in accordance with the case-law referred to in paragraphs 97, 99, 121 and 123 above, it provided plausible explanations as to why access to the redacted information could specifically and actually undermine the protection of the commercial interests of the undertakings concerned and as to why the alleged risk could be regarded as reasonably foreseeable and not purely hypothetical.

– The provisions on contractual liability

- 150 In the present case, as stated in paragraphs 143 to 145 above, it is apparent from the contested decision that the Commission refused full access to the provisions on the contractual liability of the undertakings concerned in order not to risk revealing allegedly commercially sensitive information regarding the risks identified in respect of the implementation of the agreements at issue and regarding the financial thresholds accepted by those undertakings as regards those risks, at a time characterised by a high demand for COVID-19 vaccines and during which negotiations with purchasers from third countries were ongoing or, at the very least, conceivable.

- 151 Having consulted the full versions of the agreements at issue, the Court notes that the provisions on the liability of the undertakings concerned in the event of breach, termination or suspension of those agreements, in particular in connection with delays in delivery or shortfalls in deliveries, are different. Furthermore, the applicants have not disputed either the context of high demand for COVID-19 vaccines or the fact that negotiations with purchasers from third countries were ongoing or, at the very least, conceivable.
- 152 It follows that the Commission was right to find, in the contested decision, that full disclosure of those provisions could provide competitors of the undertakings concerned and third-party purchasers with commercially sensitive information on cost elements, their internal capacity and strategies and on the financial thresholds accepted (see, to that effect, judgment of 12 October 2022, *Saure v Commission*, T-524/21, EU:T:2022:632, paragraphs 99 to 102).
- 153 It follows from the foregoing that the Commission's explanations in the contested decision concerning the existence of a reasonably foreseeable and non-hypothetical risk of the protection of the commercial interests of the undertakings concerned being undermined, as regards full disclosure of the provisions on the contractual liability of those undertakings, are well founded.

– *The provisions on indemnification*

- 154 As a preliminary point, it should be noted that, according to Articles 1 and 12 of 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 (OJ 1985 L 210, p. 29), a producer is liable for damage caused by a defect in his product and his liability to the injured person may not be limited or excluded by a provision limiting his liability or exempting him from liability. Thus, as acknowledged by the Commission at the hearing, in the absence of an amendment of Directive 85/374, neither the Commission nor the Member States were entitled to derogate from the provisions of that directive.
- 155 Moreover, no provision of Directive 85/374 prohibits a third party, in this instance a Member State, from reimbursing the damages which a producer has paid on account of his product being defective.
- 156 In addition, the Court observes that the 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 was published on the Commission's website on 7 September 2020 and was disclosed in full as an annex to the agreements at issue, Document 1 excepted. That provision envisages a mechanism whereby the Member States indemnify the undertakings concerned in respect of the economic costs, that is to say possible damages, which would normally be borne by those undertakings under their liability for their vaccines. Similarly, Communication COM(2020) 245 final, referred to in paragraph 3 above, states that that mechanism was to be regarded as an 'insurance policy', consisting of transferring some of the economic risk borne by the pharmaceutical industry to the public authorities, in exchange for which the Member States were assured of equitable and affordable access to a vaccine, should one become available.
- 157 It follows from the foregoing that, first, the mechanism whereby the Member States indemnify the undertakings concerned in no way affects the regime for the legal liability of those undertakings under Directive 85/374 and, second, that information was already in the public domain at the time when the initial request for access was made and when the contested decision was adopted.

- 158 Having consulted the full versions of the agreements at issue, the Court notes that, although the advance purchase agreements and the purchase agreements all contain a provision on indemnification, as envisaged by Article 6 of the agreement of 16 June 2020 on the procurement of COVID-19 vaccines concluded between the Commission and the Member States, the detailed content of those provisions is not identical. In that context, the Court notes that there are differences as regards (i) the precise situations in which it was agreed that the indemnification by the Member State would not be applicable, most of those situations nevertheless remaining broadly similar in the agreements at issue; (ii) the temporal or material scope of any indemnification, and (iii) the arrangements for managing the defence of any actions for damages and implementation of any indemnification.
- 159 Those clarifications having been made, it remains to be determined whether the Commission was right to refuse the wider, or even full, disclosure of the provisions on indemnification.
- 160 In that regard, the first ground relied on in the contested decision, namely that precise knowledge of the limits of the liability of the undertaking concerned would allow for strategic behaviour against it, in so far as that undertaking could be faced with the economic consequences of multiple sets of legal proceedings, brought unreasonably and without justification with the sole aim of receiving compensation for the use of its vaccine, cannot be upheld.
- 161 Even if the fact that actions for damages brought against a company may undoubtedly entail high costs, whether in terms of economic resources, time or staff, and even if the actions are subsequently dismissed as unfounded, the right of third parties who may have been harmed by a defective vaccine to bring actions for damages against the undertakings concerned is based on national legislation transposing Directive 85/374. That right of action is independent of the existence and content of the provisions on indemnification.
- 162 Furthermore, the interest of the undertakings concerned in avoiding such actions for damages, should they in fact have produced and put into circulation a defective vaccine, cannot be regarded as a commercial interest and, in any event, does not constitute an interest deserving of protection, having regard, in particular, to the fact that any individual has the right to claim damages for harm caused to him or her by a defective product (see, by analogy, judgment of 15 December 2011, *CDC Hydrogene Peroxide v Commission*, T-437/08, EU:T:2011:752, paragraph 49 and the case-law cited). Similarly, the desire to avoid incurring higher costs in connection with court proceedings does not constitute an interest protected under the first indent of Article 4(2) of Regulation No 1049/2001 (see, to that effect, judgment of 28 June 2019, *Intercept Pharma and Intercept Pharmaceuticals v EMA*, T-377/18, not published, EU:T:2019:456, paragraphs 55 and 56).
- 163 Furthermore, there is nothing in the contested decision to support the conclusion that the wider disclosure of the mechanism for indemnification of the undertakings concerned might give rise to actions brought against those undertakings. Such actions will always seek an order that the producer of vaccines pay compensation for the damage suffered, irrespective of the identity of the entity that will ultimately bear the damages paid.
- 164 In those circumstances, the Court considers that the first ground relied on in the contested decision for refusing the wider disclosure of the provision on indemnification does not demonstrate, as required by the case-law cited in paragraph 99 above, the existence of a foreseeable and not purely hypothetical risk to the commercial interests of the undertakings concerned.

- 165 The second ground relied on in the contested decision for refusing full disclosure of the provisions on indemnification, in particular those defining the exact conditions under which indemnification by the Member State is excluded, is that such disclosure would inevitably reveal to competitors of the undertaking concerned, including those which do not produce vaccines, the ‘weak points’ of the coverage of its liability, and would provide them with a competitive advantage which they could exploit, for example, in advertisements and comparative advertising.
- 166 In that regard, it must be noted that the reason why the provisions on indemnification were incorporated into the agreements at issue, namely to compensate for the risks incurred by the undertakings concerned in connection with the shortening of the period for the development of the vaccines, was in the public domain before the adoption of the contested decision.
- 167 In addition, all the agreements at issue contain a provision on indemnification which, moreover, lists, in a broadly similar manner, the main specific situations in which the indemnification of the undertaking concerned by the Member State is excluded.
- 168 Since all the undertakings concerned obtained, for an identified and legitimate reason, a provision on indemnification, there is nothing in the contested decision to support the conclusion that, in the event of wider disclosure of the provision on indemnification, the risk of the commercial interests of the undertakings concerned being undermined, in particular through their obtaining a competitive advantage over each other, was, on the date on which the decision was adopted, reasonably foreseeable and not purely hypothetical.
- 169 In those circumstances, the Court considers that the second ground relied on in the contested decision for refusing the wider disclosure of the provision on indemnification does not demonstrate, as required by the case-law cited in paragraph 99 above, the existence of a foreseeable and not purely hypothetical risk to the commercial interests of the undertakings concerned.
- 170 As regards the third ground relied on in the contested decision for refusing full disclosure of the provision on indemnification, in particular disclosure of the conditions under which indemnification by the Member State is excluded, namely that precise knowledge of the limits of the liability of the undertakings concerned would have repercussions on their reputations with consumers and with their potential business partners, it should be noted that, contrary to what the applicants claim, damage to the reputation of an undertaking undoubtedly constitutes damage to its commercial interests in so far as the reputation of any operator active on a market is essential for the performance of its economic activities on the market (see, to that effect, judgment of 5 December 2018, *Falcon Technologies International v Commission*, T-875/16, not published, EU:T:2018:877, paragraphs 51 and 53).
- 171 Nevertheless, for the same reasons as those set out in paragraphs 166 to 168 above, there is nothing in the contested decision that could reasonably support the conclusion that, in the event of wider disclosure of the provision on indemnification, the risk of the commercial interests of the undertakings concerned being undermined, in particular their reputation, was, on the date the contested decision was adopted, reasonably foreseeable and not purely hypothetical.

- 172 In those circumstances, the Court considers that the third ground relied on in the contested decision for refusing the wider disclosure of the provision on indemnification does not demonstrate, as required by the case-law cited in paragraph 99 above, the existence of a foreseeable and not purely hypothetical risk to the commercial interests of the undertakings concerned.
- 173 In the light of the foregoing, the second complaint in the second part of the second plea is well founded as regards the provisions on indemnification in the agreements at issue.
- 174 It follows that the second complaint in the second part of the second plea must be upheld in part as regards the provisions on indemnification and must be rejected in part as regards the provisions on the contractual liability of the undertakings concerned.

(3) The refusal of access to the list of manufacturing network partners and subcontractors of the undertakings concerned

- 175 By a third complaint, the applicants dispute the sufficiency of the statement of reasons in the contested decision and its validity as justification for the refusal of access to information relating to the list of manufacturing network partners and subcontractors of the undertakings concerned, on the basis of the exception relating to the protection of commercial interests provided for in the first indent of Article 4(2) of Regulation No 1049/2001.
- 176 The Commission disputes those arguments.
- 177 In that regard, it should be noted that, in the contested decision, the Commission stated that the decision to have a production site in a given location or to use a given subcontractor for a particular task was part of the internal business strategy of the undertakings concerned and was the result of a precise economic choice. The identity of those sites and their economic or industrial relationship with the undertaking concerned do not fall within the public domain. It concluded that the disclosure of the annexes to all the agreements at issue concerning the subcontractors would reveal to the competitors of those undertakings significant elements of their industrial capacity and could adversely affect their industrial capacity to produce the vaccine, or even, ultimately, make it more difficult in economic terms to finalise the implementation of the agreements concluded.
- 178 Thus, contrary to the applicants' contentions, the Commission provided sufficient explanations as to the commercially sensitive nature of the information relating to the list of manufacturing network partners and subcontractors of the undertakings concerned, and therefore the applicants' complaint relating to the insufficiency of the reasons stated in the contested decision in that regard must therefore be rejected.
- 179 Having consulted the full versions of the agreements at issue, the Court notes that they set out, with varying detail, the identity and location of the various subcontractors or partners of the undertakings concerned and, as the case may be, the allocation of tasks among the listed entities. In addition, in some cases, amendments, such as additions or changes of sites or partners, were made at the stage of the purchase agreement as compared to the advance purchase agreement.

180 Accordingly, the Commission was right to find, in the contested decision, that the information on the list of manufacturing network partners and on the subcontractors of the undertakings concerned, redacted in the agreements at issue, fell within the scope of their commercial relations and, ultimately, of their capacity and industrial and business strategy.

181 As stated in paragraph 100 above, the protection which must be guaranteed to commercial interests in accordance with the first indent of Article 4(2) of Regulation No 1049/2001 may cover such information.

182 In addition, as the Commission observes, in essence, it cannot be precluded that the commercial relations formed by the undertakings concerned with their manufacturing network partners and their subcontractors created a synergy of commercial value and that disclosure of name-specific data relating to those relations could undermine the commercial interests of those concerned or harm fair competition (see, to that effect and by analogy, judgment of 17 November 2022, *Antea Polska and Others*, C-54/21, EU:C:2022:888, paragraph 79).

183 Moreover, the information set out in the agreements at issue cannot be regarded as historic (see, to that effect, judgment of 7 July 2015, *Axa Versicherung v Commission*, T-677/13, EU:T:2015:473, paragraph 154 and the case-law cited, and order of 12 July 2018, *RATP v Commission*, T-250/18 R, not published, EU:T:2018:458, paragraphs 55 and 57). That information was less than two years old and, as is apparent from the Commission's response to a question put by way of a measure of organisation of procedure, most of the agreements at issue were still being implemented when the contested decision was adopted.

184 Lastly, the applicants do not dispute either the very competitive context in which the undertakings concerned were involved, or the context of high demand for COVID-19 vaccines.

185 It follows that the Commission was correct to take the view, in the contested decision, that full disclosure of the list of manufacturing network partners and subcontractors could provide competitors of the undertakings concerned with commercially sensitive information relating to their industrial capacities (see, to that effect, judgments of 7 September 2022, *Saure v Commission*, T-651/21, not published, EU:T:2022:526, paragraphs 108 and 109, and of 12 October 2022, *Saure v Commission*, T-524/21, EU:T:2022:632, paragraphs 99 to 102).

186 It follows from the foregoing that the explanations given by the Commission, in the contested decision, concerning the existence of a reasonably foreseeable and not hypothetical risk that the protection of the commercial interests of those undertakings would be undermined as regards full disclosure of the list of manufacturing network partners and subcontractors of the undertakings concerned are well founded.

187 In the light of the foregoing, the third complaint in the second part of the second plea must be rejected.

(c) Conclusion on the second plea

188 For the reasons stated in paragraphs 65 to 92 and in paragraphs 154 to 174 above, the first part of the second plea and the second complaint in the second part of the second plea must be upheld and the contested decision must be annulled as regards the partial refusal of access to the declarations of absence of conflict of interests and to the provisions on indemnification, and the second plea must be rejected as to the remainder.

3. The third plea in law, alleging that there is an overriding public interest justifying full access to the requested documents

189 In support of the third plea, the applicants claim that their request for access to the documents is justified by an overriding public interest capable of specifically justifying disclosure of the redacted sensitive information. In particular, the applicants rely on the EU principle of good governance and the principle of transparency, which is particularly critical, as the requested documents played a part in undermining their fundamental rights. They also rely on the fundamental principles governing public procurement in the European Union and the rights to a fair trial, to good administration and to the integrity of the individual. They claim that they should be able to evaluate and verify the practices of the institutional players responsible for negotiating and awarding the agreements at issue, to check the lawfulness of those agreements, ensure the proper use of the public funds committed by the Commission and give free and informed consent to vaccination. They invoke the reluctance of many citizens to be vaccinated, the fact that they are obliged to be vaccinated in the light of the restrictions on freedom of movement on public health grounds imposed by the Member States and their desire to be able to have access to the agreements at issue in the interest of being properly informed and giving their consent to medical action.

190 The Commission disputes those arguments.

191 In that regard, first, the Court notes, by way of preliminary observation, that the examination of the third plea concerns only the agreements at issue, namely the documents which the Commission considered to be covered by the exception referred to in the first indent of Article 4(2) of Regulation No 1049/2001.

192 Article 4(1)(b) of Regulation No 1049/2001 does not provide for the public interest in privacy and the integrity of the individual to be weighed against an overriding public interest (judgment of 15 July 2015, *Dennekamp v Parliament*, T-115/13, EU:T:2015:497, paragraph 62). Accordingly, the third plea does not concern the declarations of absence of conflict of interests that were addressed in the context of the first part of the second plea.

193 Second, the Court notes that the second complaint in the second part of the second plea must be upheld in part, in that the reasons for refusing wider disclosure of the provisions relating to indemnification do not demonstrate the existence of a foreseeable and not purely hypothetical risk that the commercial interests of the undertakings concerned will be undermined, contrary to the first indent of Article 4(2) of Regulation No 1049/2001. It follows that the examination of the third plea does not concern that aspect of the contested decision.

194 In accordance with the final phrase of Article 4(2) of Regulation No 1049/2001, the institutions are to refuse access to a document where disclosure would undermine, inter alia, the protection of commercial interests of a specific natural or legal person ‘unless there is an overriding public interest in disclosure’. It follows that the EU institutions cannot refuse access to a document where its disclosure is justified by an overriding public interest, even if disclosure could undermine the protection of the commercial interests of a specific natural or legal person.

195 In that context, it is necessary to weigh, on the one hand, the particular interest to be protected by non-disclosure of the document concerned against, on the other hand, inter alia, the public interest in the document being made accessible, having regard to the advantages of increased openness, as described in recital 2 of Regulation No 1049/2001, in so far as it enables citizens to

participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system (see judgment of 21 October 2010, *Agapiou Joséphidès v Commission and EACEA*, T-439/08, not published, EU:T:2010:442, paragraph 136 and the case-law cited; judgment of 5 February 2018, *PTC Therapeutics International v EMA*, T-718/15, EU:T:2018:66, paragraph 107).

- 196 It is for the party requesting access to refer to specific circumstances to establish an overriding public interest that justifies disclosure of the documents concerned (see judgments of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 94 and the case-law cited, and of 16 July 2015, *ClientEarth v Commission*, C-612/13 P, EU:C:2015:486, paragraph 90 and the case-law cited). It is for the party alleging an overriding public interest within the meaning of the final phrase of Article 4(2) of Regulation No 1049/2001 to prove that interest (judgment of 25 September 2014, *Spirlea v Commission*, T-306/12, EU:T:2014:816, paragraph 97).
- 197 In that context, the person intending to object to a reason for refusing disclosure must assert the existence of a public interest capable of prevailing over that reason and, moreover, demonstrate precisely that, in the particular case, disclosure of the documents concerned would contribute specifically to ensuring the protection of that public interest to the extent that the principle of transparency prevails over the protection of the interests that provided the basis for the refusal to disclose (see, to that effect, order of 21 May 2019, *Pint v Commission*, C-770/18 P, not published, EU:C:2019:436, paragraph 18), namely, in the present case, the protection of the commercial interests of the undertakings concerned.
- 198 The overriding public interest that may justify disclosure of a document need not necessarily be distinct from the principles which underlie Regulation No 1049/2001. However, general considerations cannot be applied to justify access to the requested documents, which requires that the principle of transparency is, in a given situation, of particularly pressing concern that prevails over the reasons justifying the refusal to disclose the documents in question (see, to that effect, judgments of 14 November 2013, *LPN and Finland v Commission*, C-514/11 P and C-605/11 P, EU:C:2013:738, paragraphs 92 and 93 and the case-law cited, and of 16 July 2015, *ClientEarth v Commission*, C-612/13 P, EU:C:2015:486, paragraphs 92 and 93).
- 199 In the confirmatory application, the applicants asserted an overriding public interest justifying disclosure of the requested documents based in essence on the transparency which the ‘good governance governing the functioning of the European Union in accordance with Article 15 TFEU’ entailed. They maintain that that public interest prevails over the commercial interests of the undertakings concerned, given the health emergency.
- 200 In the contested decision, by which the Commission granted wider access to documents 1, 3 to 6, 8 and 9, which had previously been disclosed, and partial access to 2, 7 and 10 to 13, which up to that time had not been publicly disclosed, in a redacted form, the Commission states that it recognises the emergency linked with the COVID-19 pandemic, agrees with the importance of public confidence in the Commission’s actions with respect to the purchase of vaccines and recognises the high degree of transparency required. However, it considered that the applicants had not established the need to disclose the commercially sensitive information redacted on the basis of the first indent of Article 4(2) of Regulation No 1049/2001. In its view, the arguments relating to good governance and transparency were of a general nature. It observed that it had regularly communicated information on the state of play of negotiations with the undertakings

concerned and the various steps taken, including with the European Parliament, to ensure transparency. It stated that it had consulted the undertakings concerned with a view to granting the widest possible access to the agreements at issue. However, it emphasised that the right of access to documents was not a general and absolute right. It then pointed out that general considerations, including the protection of public health, were not sufficient to justify an overriding public interest, without details of the specific grounds showing the extent to which disclosure would serve that public interest. It stated that it had been unable to identify any public interest capable of prevailing over the public and private interest protected by the first indent of Article 4(2) of Regulation No 1049/2001. Lastly, it considered that the fact that the agreements at issue were related to an administrative procedure and not to legislative acts reinforced the conclusion that no overriding public interest justified disclosure of the redacted passages.

- 201 In the present case, the Commission's assessment is not vitiated by an error of law as regards the first indent of Article 4(2) of Regulation No 1049/2001.
- 202 In particular, the applicants referred, in their confirmatory application, only to general considerations relating to transparency and good governance. Such considerations are not of such a kind as to establish that the interest relating to transparency was, in the present case, of particularly pressing concern that could have prevailed over the reasons justifying the refusal to disclose the redacted parts of the agreements at issue.
- 203 In any event, it should be stated that the Commission did not deny that there was a public interest in receiving information relating to the purchase of the vaccines and to the agreements at issue, but considered, in the contested decision, that that interest was satisfied by the various steps taken to ensure transparency, including the publication of updated information on the state of play of the negotiations and the communication of information to the Parliament, both orally and in writing. It should also be stated that the redacted information does not contain scientific evidence relating to the efficacy and safety of the vaccines that would affect any concerns that the public might have about the use of the vaccines.
- 204 That conclusion is not called into question by the arguments put forward by the applicants in their statement of modification.
- 205 First, contrary to the applicants' contention, it is apparent from the contested decision that the Commission examined the question of the existence of an overriding public interest, as paragraph 3 of that decision deals with that question.
- 206 Second, in so far as the applicants claimed in the confirmatory application that there was an overriding public interest that justified full disclosure of the agreements at issue, it was for them to refer specifically to the circumstances justifying such disclosure. The applicants' argument that it was for the Commission to examine such an interest on its own initiative, even if they had not made reference to it, cannot call into question that finding.
- 207 It is true that Article 6(1) of Regulation No 1049/2001, which lays down the practical procedures for applications for access to documents under that regulation, provides that 'the applicant is not obliged to state reasons for the application'. However, where an institution receiving an application for access finds that the disclosure could undermine the protection of one of the interests set out in Article 4(2) of that regulation, as the Commission did in its response to the

initial request, the applicant who wishes the institution in question to reconsider its position and who relies on the existence of an overriding public interest must submit arguments to that effect, as stated in paragraphs 196 and 197 above.

- 208 Third, as regards the general assertions concerning their wish to be able to monitor the practices of the institutional players responsible for awarding the agreements at issue and the lawfulness of those agreements and to ensure the proper use of the public funds committed by the Commission, the applicants have not substantiated the specific reasons which, in the present case, would justify wider disclosure of the agreements at issue. In that context, it should be observed that it is not for the applicants to establish the extent to which EU procurement law and Belgian law, which is the law governing the agreements at issue, were complied with. Likewise, it is not for them to ensure the protection of the financial interests of the European Union. Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 (OJ 2018 L 193, p. 1), and Regulation 2016/369 as amended by Regulation 2020/521, and also the agreements at issue, contain provisions authorising the Commission, the European Court of Auditors and the European Public Prosecutor's Office to carry out audits and investigations, according to their respective competences. Furthermore, the applicants have not explained how disclosure of the redacted commercially sensitive information would enable them to have an informed opinion as regards the joint award of contracts for COVID-19 vaccines or as regards the use of public funds, when that information would be liable to be used against the undertakings concerned, or even against the Commission and the Member States in the context of subsequent purchase agreements. It follows that the applicants have failed to demonstrate precisely how disclosure of the redacted information would make a specific contribution to ensuring the protection of the interests on which they rely.
- 209 Fourth, in so far as the applicants maintain, in essence, that wider disclosure of the agreements at issue is necessary in order for them to be properly informed and to give their informed consent to vaccination against COVID-19, apart from the fact that those assertions are of a general nature, they are based on the assumption that the redacted passages of the agreements at issue contain sufficient scientific evidence capable of relating to any public concerns relating to the use of vaccines. However, as pointed out in paragraph 202 above, that is not the case and, as stated in paragraph 126 above, the undertakings concerned are required to fulfil all the conditions laid down in the marketing authorisations. It cannot therefore be considered that the applicants have demonstrated that disclosure of the redacted information would make a specific contribution to ensuring the protection of the public interest on which they rely.
- 210 Fifth, the applicants' argument that transparency is of particularly pressing concern, as the agreements at issue contributed to the undermining of their fundamental rights, must be rejected. Those agreements do not establish either an obligation to be vaccinated against COVID-19 or an obligation to present proof of vaccination as a condition for the lifting of the restrictions on freedom of movement put in place by the Member States on public health grounds. In that regard, the obligations to that effect originate solely from the national laws of the Member States (see, to that effect, order of 29 April 2022, *Abenante and Others v Parliament and Council*, T-527/21, not published, EU:T:2022:278, paragraphs 22 and 23).

211 Lastly, in so far as the applicants rely on the wish to exercise democratic control of the Commission's actions, as the Commission stated in the contested decision, its administrative activity does not require such extensive access to documents as that required by the legislative activity of an EU institution (see, by analogy, judgments of 29 June 2010, *Commission v Technische Glaswerke Ilmenau*, C-139/07 P, EU:C:2010:376, paragraph 60, and of 27 February 2014, *Commission v EnBW*, C-365/12 P, EU:C:2014:112, paragraph 91).

212 In the present case, the agreements at issue form part of an administrative activity.

213 In those circumstances, the Commission did not err in law when, on the date the contested decision was adopted, it relied on the exception relating to the protection of the commercial interests of the undertakings concerned, bearing in mind, however, that, as is apparent from Article 4(7) of Regulation No 1049/2001, that exception does not apply for an unlimited period, but only for as long as that protection is justified on the basis of the content of the document at issue (see, to that effect, judgment of 26 January 2010, *Internationaler Hilfsfonds v Commission*, C-362/08 P, EU:C:2010:40, paragraphs 56 and 57).

214 It follows that the third plea, as defined in paragraphs 191 to 193 above, must be rejected as unfounded.

4. The fourth plea, alleging breach of the principle of proportionality

215 In support of the fourth plea, the applicants maintain that the measures taken by the Commission are in breach of the principle of proportionality.

216 The Commission contends that those allegations must be rejected.

217 In the present case, for the reasons stated in paragraphs 85 to 92 and 193 above, the examination of the fourth plea does not concern the partial refusal of access to either the declarations of absence of conflict of interests or the provisions of the agreements at issue relating to indemnification.

218 As regards the criticism made of the Commission for not having ascertained whether disclosure was proportionate to the undermining of the applicants' interests, it should be emphasised that Article 4(6) of Regulation No 1049/2001 provides that if only parts of the requested document are covered by any of the exceptions, the remaining parts of the document are to be released and that the Commission's examination of partial access to that document must be carried out by reference to the principle of proportionality (see, to that effect, judgment of 6 December 2001, *Council v Hautala*, C-353/99 P, EU:C:2001:661, paragraphs 27 and 28).

219 The case-law makes clear that that it follows from the very wording of Article 4(6) of Regulation No 1049/2001 that an institution or body is required to consider whether it is appropriate to grant partial access to requested documents and to confine any refusal to information covered by the relevant exceptions. The institution or body must grant such partial access if the aim pursued by that institution or body in refusing access to a document could be achieved if the institution merely struck out the passages which might harm the public interest to be protected (judgment of 12 September 2013, *Besselink v Council*, T-331/11, not published, EU:T:2013:419, paragraph 84; see, to that effect, judgment of 6 December 2001, *Council v Hautala*, C-353/99 P, EU:C:2001:661, paragraph 29).

- 220 The detailed analysis of the various documents set out in the contested decision shows that the Commission examined the request for access to documents in strict compliance with the principle of proportionality, the application of which in the field of access to documents was described by the case-law referred to in paragraphs 218 and 219 above.
- 221 In the light of the foregoing, the fourth plea, as defined in paragraph 217 above, must be rejected as unfounded.
- 222 In the light of all of the foregoing considerations, the contested decision must be annulled in so far as it refuses, contrary to Article 4(1)(b) of Regulation No 1049/2001, wider access to the declarations of absence of conflict of interests signed by the members of the joint negotiation team and in so far as it refuses, contrary to the first indent of Article 4(2) of Regulation No 1049/2001, wider access to the provisions on indemnification, and the action must be dismissed as to the remainder.
- 223 In that context, it should be noted that it is not for the Court to substitute itself for the Commission and to indicate the parts of the documents to which total or partial access should have been granted, the institution being required, when giving effect to this judgment and in accordance with Article 266 TFEU, to take into account the reasoning set out in it (see, to that effect, judgment of 6 July 2006, *Franchet and Byk v Commission*, T-391/03 and T-70/04, EU:T:2006:190, paragraph 133).

IV. Costs

- 224 Under Article 134(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Furthermore, under Article 137 of the Rules of Procedure, where a case does not proceed to judgment, the costs are to be in the discretion of the General Court. Since the Commission has been largely unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the applicants.

On those grounds,

THE GENERAL COURT (Fifth Chamber)

hereby:

- 1. Declares that there is no longer any need to adjudicate on the head of claim seeking annulment of the implied decision of the European Commission of 24 September 2021 rejecting the confirmatory application for access to documents;**
- 2. Annuls Commission Decision C(2022) 1359 final of 28 February 2022, which was adopted pursuant to Article 4 of 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, and which granted Mr Fabien Courtois and the other natural persons whose names are set out in the annex partial access to certain documents relating to the purchase of vaccines by that institution in the context of the COVID-19 pandemic, and annuls the French version of that decision, which was communicated on 31 March 2022 to Mr Courtois and to the other applicants whose names are set out in the annex, in so far as the Commission refused wider access (i) to the declarations by the members of the joint team who negotiated the purchase of COVID-19 vaccines that they had no conflict of interests, such refusal being based on Article 4(1)(b) of Regulation No 1049/2001, and (ii) to the provisions on indemnification in the advance purchase agreements and purchase agreements concluded between the Commission and the relevant pharmaceutical companies for the purchase of those vaccines, such refusal being based on the first indent of Article 4(2) of that regulation;**
- 3. Dismisses the action as to the remainder;**
- 4. Orders the Commission to pay the costs, including the costs relating to the initial version of the application initiating proceedings.**

Svenningsen

Mac Eochaidh

Martín y Pérez de Nanclares

Delivered in open court in Luxembourg on 17 July 2024.

[Signatures]

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