



EUROPEAN COMMISSION  
HEALTH EMERGENCY PREPAREDNESS AND RESPONSE AUTHORITY

The Director-General

Brussels  
HERA.03

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**Subject: Your application for access to documents – EASE 2026/1867**

Dear Ms Błaszczyk,

We refer to your request for access to European Commission documents registered on 3 April 2026 under the above-mentioned reference number.

Your request under Regulation (EC) No 1049/2001 refers to:

- *The Advance Purchase Agreement (APA) concluded between the European Commission and Pfizer/BioNTech concerning the procurement of COVID-19 vaccines;*
- *Any annexes, amendments, or addenda to this agreement;*
- *Any documents containing the final agreed terms of purchase, including liability clauses.*

Please note that the reply to your request has been delayed due to the fact that the extent of disclosure of the document you have requested was examined by the General Court <sup>(1)</sup>, following which the Commission issued the Implementing Decision which can be accessed under the link in footnote <sup>(2)</sup>.

*Identification of requested document*

The following document has been identified as falling within the scope of your request and encompassing the requests set out above.

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<sup>(1)</sup> Judgment of the General Court of 17 July 2024, Auken, Metz, Paulus and van Sparrentak v European Commission, T-689/21, EU:T:2024:476

<sup>(2)</sup> <https://ec.europa.eu/transparency/documents-request/search/document-details/24056>

- Advance purchase agreement signed between the European Commission and BioNTech-Pfizer, reference Ares(2021)256798

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, we have come to the conclusion that it may be partially disclosed.

Some parts of the identified document have been blanked out as their disclosure is prevented by the exceptions to the right of access laid down in Article 4(1)(b) (protection of personal data) of Regulation (EC) No 1049/2001.

In addition, some parts have been blanked out as their disclosure is also prevented by the exceptions to the right of access laid down in Article 4(2) first indent (protection of the commercial interests) of Regulation (EC) No 1049/2001.

Following the mentioned Implementing Decision, the Commission has already made publicly available the redacted version of the identified document above, at the following link:

<https://ec.europa.eu/transparency/documents-request/search/document-details/24538>

In addition, you can find attached the same document for your convenience.

*Protection of the privacy and integrity of individuals- Article 4(1)(b) of Regulation (EC) No 1049/2001*

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (*Bavarian Lager*) <sup>(3)</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(4)</sup> (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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 <sup>(5)</sup> (hereafter ‘Regulation (EU) 2018/1725’).

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<sup>(3)</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereinafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>(4)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(5)</sup> OJ L 205, 21.11.2018, p. 39.

However, the case law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’ <sup>(6)</sup>.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’ <sup>(7)</sup>.

The identified document contains personal data, such as the names and surnames of representatives of the companies concerned as well as handwritten signatures of representatives of the European Commission.

In accordance with the Commission’s internal administrative practice, the names and surnames of staff members forming part of the senior management of the Commission are disclosed and only the handwritten signatures are redacted.

As far as the representatives of the companies are concerned, the names <sup>(8)</sup> of the persons concerned as well as other data from which their identity can be deduced constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he 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’.

Consequently, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure of the personal data concerned.

*Protection of the commercial interests of a legal person - Article 4(2), first indent, of*

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<sup>(6)</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>(7)</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

<sup>(8)</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

Regulation (EC) No 1049/2001

Article 4(2) first indent of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the commercial interests of a natural or legal person, including intellectual property’.

The General Court has concluded that commercially sensitive information relating in particular to the business strategies of the undertakings concerned, to their commercial relations, or where those documents contain information particular to that undertaking which reveal its expertise, are covered by the protection provided for in Article 4(2) first indent of Regulation (EC) No 1049/2001 <sup>(9)</sup>.

Article 4(2), first indent, of Regulation (EC) No 1049/2001 must be interpreted consistently with Article 339 of the Treaty on the Functioning of the European Union (hereafter ‘TFEU’), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings and their business relations. Applying Regulation (EC) No 1049/2001 cannot have the effect of rendering ineffective Article 339 TFEU, over which it does not have precedence.

The redacted parts of the identified document you request contain information that, if disclosed, would damage the competitive positions of the companies concerned as business actors on the global market for the production and commercialisation of these pharmaceutical products. This is the reason why the document itself contains confidentiality requirements. As stated in the document, not respecting the confidentiality obligations would amount to a breach of the contract and could be subject to sanctions under applicable securities laws and regulations.

The General Court has already confirmed <sup>(10)</sup> that the “commercial interests” exception covers commercially sensitive information relating in particular to:

- the business strategies of the undertaking(s) concerned;
- their commercial relations;
- expertise;
- prices;
- offers' comparative attractiveness;
- financing arrangements;
- amounts of their sales, their market shares; etc.

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<sup>(9)</sup> Judgment of 9 September 2014, *MasterCard and Others v Commission*, T-516/11, EU:T:2014:759, paragraphs 82 to 84 (hereinafter *MasterCard and Others v Commission*).

<sup>(10)</sup> Judgment of the General Court of 7 February 2018 in case T-718/15, *PTC Therapeutics International v European Medicines Agency (EMA)*, EU:T:2018:66, paragraph 85.  
Judgment of the General Court of 7 September 2022 in case T-448/21, *Saure v European Commission*, EU:T:2022:525, paragraph 88.

The individual negotiation process with each vaccine manufacturer entails that some technical parts of the bid of the tenderer are often taken, normally without significant modifications, in the individual clauses of each contract.

The bids of tenderers are normally protected by default according to the case-law, which has recognised the existence of a general-presumption of non-disclosure, since their disclosure could be used to distort competition, whether in an ongoing procurement procedure or in subsequent procedures <sup>(11)</sup>.

The redacted parts in the identified document contain commercially confidential information such as information about the how the companies handle requests to supply vaccine doses, product specifications and component parts, performance apportionment, timelines, delivery schedules and deadlines, detailed pricing information, information on subcontractors, etc.

#### *Information on contractors' industrial organisation and capacity*

Some of the redacted parts of the document clearly contain elements that are directly linked with the know-how concerning the development and production of the vaccine.

If publicly disclosed, details on the product and technology developed by the companies could be used by competitors for their own products, in particular by those pharmaceutical companies that could have recourse to the same technology, thereby creating a subsequent prejudice to their position on the market.

Moreover, the disclosure of the definition of the mutual obligations of the parties in the field of intellectual property rights can bring prejudice to the contractor. Disclosure of these provisions would weaken companies' negotiating positions in future contracts negotiations.

A similar concern exists, finally, as regards, on the one hand, the indication of the production sites, such as in Article I.6.3 of the document, and, on the other, the indication of subcontractors (for instance in the article II.12 and Annex IV to the document). In both cases, the identity of these sites and, more importantly, of their economic or industrial connection with the contractor is not in the public domain. It is often part of the commercial strategy of the operator to have a site in a particular geographic location or to have recourse to a specific manufacturer. Indeed, that specific location (for instance in the EU or outside the territory of the Union) or the recourse to that specific subcontractor (for example only for fill-and-finish, or also for the distribution) follows from a precise economic choice of the contractor, which reflects its internal business strategy. Similarly, a concern exists as regards the delivery process and schedules, since such information can reveal technical

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<sup>(11)</sup> Judgment of the General Court of 26 March 2020, *ViaSat Inc. v European Commission*, T-734/1, EU:T:2020:123, paragraph 43, 50 and 65.  
Judgment of the General Court of 7 September 2022 in case T-651/21, *Saure v European Commission*, EU:T:2022:526, paragraph 104, which concerned the procurement of COVID-19 vaccines.

information on the production process, given the very particular features of the product (article I.6.10 of the document).

Accordingly, in each of the situations described above, disclosure of the information contained in the redacted contractual provisions would inevitably reveal to the contractors' competitors a significant element of the contractor's industrial capacity.

#### Information on contractors' financial risks

The identified document sets out the procedures and conditions according to which the Participating Member States shall pay for the COVID-19 doses ordered by them under the contract. The document also specifies the obligations of the parties during and after the duration of the contract.

As regards more specifically the price per dose, total price and currency details (such as exchange rate methodology used for currency conversion) in the contract (articles I.7, and I.8 of the document), disclosure of such sensitive commercial information would allow to draw conclusions on the companies' commercial and pricing strategies which in turn could be used by competitors to plan their own strategies for their own products. In turn, it could seriously undermine the current and future negotiations these companies have worldwide with other entities purchasing their product, with whom they have not yet negotiated the pricing and currency terms.

The case law of the European Court of Justice has already clarified that commercially sensitive information relating, in particular, to the business strategies of the undertakings concerned or to their commercial relations, as well as information particular to that undertaking and that can reveal its expertise, are covered by the protection provided for in Article 4(2) first indent of Regulation (EC) No 1049/2001 <sup>(12)</sup>.

Potential business risks and related advice on the reduction of those risks, prices charged as part of a sensitive contract, and thresholds of financial covenants concluded in that framework can also be commercially sensitive <sup>(13)</sup>.

The disclosure of those parts of the document would clearly put the contractor in a disadvantageous position vis-à-vis its competitors, because it would let them know the level of financial risk the contractor has accepted with the conclusion of the contracts and would provide an insight to competitors into the companies' pricing strategies.

For these reasons, it must be considered that certain financial aspects in the document should remain protected on the basis of the exception provided for in Article 4(2) first indent of Regulation (EC) No 1049/2001.

#### *Information on contractors' risks of incurring liability*

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<sup>(12)</sup> *MasterCard and Others v Commission*, cited above, paragraphs 82 to 84.

<sup>(13)</sup> Judgment of the General Court of 27 February 2018 in case T-307/16, *CEE Bankwatch Network v Commission*, paragraph 110.

Contractual provisions on liability (article II.6 of the document) have been partially redacted as disclosure of those parts would cause serious and non-hypothetical prejudice to the commercial interests of the contractor. A precise knowledge of the boundaries of the contractor's liability would allow for strategic behaviour against the latter.

## Conclusion

It must be concluded that the full disclosure of the document would undermine the commercial interests of the company, mainly by undermining their competitive positions on the global market. A full disclosure of the document would undermine the commercial interests of the company in a reasonably foreseeable and non-hypothetical manner.

Consequently, it should be concluded that access to the entirety of the document cannot be granted, on the basis of the exception provided for in Article 4(2) first indent (protection of the commercial interests) of Regulation (EC) No 1049/2001.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the document.

Please note that we have conducted our own assessment in order to determine whether any public interest is capable of overriding the public and private interest protected by Article 4(2) first indent (protection of the commercial interests). The result of this assessment is that the circumstances of the case do not substantiate a finding that the principle of transparency is especially pressing to constitute an overriding public interest in disclosure.

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In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

### **by mail:**

European Commission  
Secretariat-General

Transparency, Document Management & Access to Documents (SG.A.2)  
BERL 7/DCS  
B-1049 Bruxelles

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

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