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CVRIA
LUXEMBOURG

OPINION OF ADVOCATE GENERAL
RANTOS
delivered on 11 June 2026 [1]

Cases C-631/24 P and C-632/24 P

European Commission
v
Margrete Auken and Others (C-631/24 P)
and
European Commission
v
Fabien Courtois and Others (C-632/24 P)

(Appeal – Regulation (EC) No 1049/2001 – Access to documents of the EU institutions – Article 4(1)(b) – Exception relating to the protection of privacy and the integrity of the individual – Article 4(2), first indent – Exception based on the protection of commercial interests of a given natural or legal person – Regulation (EU) 2018/1725 – Protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies and on the free movement of such data – Article 9(1)(b) – Need for data to be transmitted for a specific purpose in the public interest – Transmission which may prejudice the legitimate interests of the data subject and the proportionality of that transmission – Documents concerning the advance purchase agreements and purchase agreements concluded between the European Commission and pharmaceutical undertakings in the context of the COVID-19 pandemic – Partial refusal of access – Annulment of Commission decisions in so far as it 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 and (ii) to the provisions on indemnification of the relevant pharmaceutical undertakings)

[1] Original language: French.

I. Introduction

1. By its appeals, the European Commission seeks to have set aside the judgments of the General Court of the European Union of 17 July 2024, *Auken and Others* v *Commission* (T-689/21, 'the first judgment under appeal', EU:T:2024:476), and *Courtois and Others* v *Commission* (T-761/21, 'the second judgment under appeal', EU:T:2024:477), by which the General Court annulled in part, respectively, Decision C(2022) 1038 final of the European Commission of 15 February 2022, taken pursuant to Article 4 of Regulation (EC) No 1049/2001, [2] granting Ms Auken and Others ('the appellants') partial access to the advance purchase agreements and purchase agreements for COVID-19 pandemic vaccines concluded between the Commission and the pharmaceutical undertakings concerned ('the first contested decision'), and Decision C(2022) 1359 final of the European Commission of 28 February 2022, adopted pursuant to Article 4 of Regulation (EC) No 1049/2001, granting Mr Courtois and Others ('the appellants') partial access to certain documents relating to the purchase of vaccines by that institution in the context of that pandemic ('the second contested decision'), as well as the French-language version of that decision, communicated on 31 March 2022.

2. Public access to European Parliament, Council of the European Union and Commission documents is governed by Regulation No 1049/2001, whereas the processing of personal data by the EU institutions, bodies, offices and agencies falls within the scope of Regulation (EU) 2018/1725; [3] these two acts must be read in conjunction for the purposes of examining the present cases.

3. These cases call upon the Court of Justice to clarify, in the context of the COVID-19 pandemic, first, the extent of the Commission's power to refuse natural persons, by relying on the protection of personal data, access to documents of the EU institutions relating, in the present case, to the names of the members of the joint negotiation team, composed of Commission officials and a small number of experts from the Member States, for the purchase of vaccines from pharmaceutical undertakings, and, secondly, the scope of the exception based on the protection of the commercial interests of those undertakings as regards the stipulations relating to indemnification, by the Member States, of potential damages, which normally is borne by those undertakings by way of their liability for their vaccines.

2 Regulation 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).

3 Regulation 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).

II. Legal framework

A. Regulation No 1049/2001

4. Article 1 of Regulation No 1049/2001, entitled 'Purpose', provides, in subparagraph (a):

'The purpose of this Regulation is:

(a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to European Parliament, Council [of the European Union] and Commission documents … provided for in Article 255 [EC] in such a way as to ensure the widest possible access to documents'.

5. Article 4 of that regulation, entitled 'Exceptions', provides, in paragraphs 1 and 2:

'1. The institutions shall refuse access to a document where disclosure would undermine the protection of:

…

(b) privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. The institutions shall 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.'

B. Regulation 2018/1725

6. Article 1 of Regulation 2018/1725, entitled 'Subject matter and objectives', provides, in paragraphs 1 and 2:

'1. This Regulation lays down rules relating to the protection of natural persons with regard to the processing of personal data by the Union institutions and bodies and rules relating to the free movement of personal data between them or to other recipients established in the Union.

2. This Regulation protects fundamental rights and freedoms of natural persons and in particular their right to the protection of personal data.'

7. Article 3 of that regulation, entitled ‘Definitions’, is worded as follows:

‘For the purposes of this Regulation, the following definitions apply:

…

(13) “recipient” means a natural or legal person, public authority, agency or any other body to which the personal data are disclosed, whether a third party or not. …’

8. Article 9 of that regulation, entitled ‘Transmissions of personal data to recipients established in the Union other than Union institutions and bodies’, is worded as follows, in paragraph 1 thereof:

‘Without prejudice to Articles 4 to 6 and 10, personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:

…

(b) 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.’

III. Background to the disputes

9. The background to the disputes, as set out by the General Court in paragraphs 2 to 13 of the first judgment under appeal and in paragraphs 2 to 17 of the second judgment under appeal may, for the purposes of this Opinion, be summarised as follows, the context being common to both cases.

A. The context common to both cases

10. On 14 April 2020, the Council adopted Regulation (EU) 2020/521, [4] by which it activated the emergency support under Regulation (EU) 2016/369, [5] in order to enable the European Union, in a spirit of solidarity, to address the crisis relating to the COVID-19 pandemic, given the quick spread of the virus and the transnational nature of its effects, which required a comprehensive response.

4 Council Regulation of 14 April 2020 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).

5 Council Regulation of 15 March 2016 on the provision of emergency support within the Union (OJ 2016 L 70, p. 1).

11. On 17 June 2020, the Commission published the Communication entitled 'EU Strategy for COVID-19 vaccines'. [6] That strategy, which was aimed at speeding up the development, manufacturing and deployment of COVID-19 vaccines, was based on two pillars. The first consisted of ensuring sufficient production of vaccines in the European Union and, consequently, the supply to the Member States, through advance purchase agreements with vaccine producers via the Emergency Support Instrument, as activated by Regulation 2020/521. The second aimed to adapt the European Union's regulatory framework to the ongoing emergency situation and to make use of the then existing regulatory flexibility to accelerate the development, authorisation and availability of vaccines, while maintaining the applicable standards of quality, safety and efficacy.

12. 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, which would assist 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 those 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.

13. 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.

B. Case C-631/24 P

14. By letter of 20 January 2021 addressed to the President and to the Secretary-General of the Commission, the appellants, all Members of the Parliament, requested, under Regulation No 1049/2001, access 'to the different contracts – advance purchase agreements – signed between the Commission and the pharmaceutical undertakings for the purchase of COVID 19 vaccines' ('initial request 1'). That letter stated that, to their knowledge, contracts had already been signed with the companies AstraZeneca, Sanofi-GSK, Johnson & Johnson, BioNTech-Pfizer, CureVac and Moderna, and therefore the request concerned those contracts as well as the contracts that might be concluded after the request, in particular the one envisaged with Novavax.

15. By letter of 11 March 2021, the Director-General of the Commission's Directorate-General (DG) for Health and Food Safety ('DG Health') informed the

6 COM(2020) 245 final.

appellants that she had identified eight documents falling within the scope of initial request 1, namely six advance purchase agreements and two purchase agreements. She stated that a redacted version of three of those advance purchase agreements, namely those concluded with AstraZeneca, Sanofi-GSK and CureVac, had been made public on one of its webpages, and that the examination of the other documents and consultations with the third parties concerned were continuing with a view to adopting decisions on the disclosure of those documents.

16. By letter of 9 June 2021, the Director-General of DG Health informed the appellants that, in response to initial request 1, partial access had been granted to nine documents identified as falling within the scope of that request, namely to the eight documents referred to above and an additional purchase agreement concluded with Pfizer-BioNTech. She stated that the redacted versions of those documents had been made public on one if its webpages and that the passages had been redacted on the basis of the exceptions relating to the protection of privacy and the integrity of the individual, the protection of commercial interests and the protection of the decision-making process of the institutions, respectively provided for in Article 4(1)(b), the first indent of Article 4(2), and the first subparagraph of Article 4(3) [7] of Regulation No 1049/2001.

17. By letter of 30 June 2021, the appellants submitted a confirmatory application requesting that the Commission reconsider its position with regard to the nine documents identified and disclose them in their entirety, save for the passages covered by the exception relating to the protection of privacy and the integrity of the individual provided for in Article 4(1)(b) of that regulation ('the first confirmatory application'). They relied, inter alia, on the fact that the prices in all the concluded advance purchase agreements and the full versions of the advance purchase agreements concluded with AstraZeneca, Pfizer-BioNTech and Moderna had been leaked on a social network and in the media between December 2020 and April 2021. On 13 August 2021, the Secretariat-General of the Commission informed the appellants that it was still not in a position to reply to their confirmatory application. On that date, the absence of a response to that confirmatory application gave rise to an implied rejection decision, in accordance with Article 8(3) of that regulation. [8]

7 Under that provision, access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, is to be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.

8 Article 8 of Regulation No 1049/2001, entitled 'Processing of confirmatory applications', provides, in paragraph 3, that: 'failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty'.

18. On 15 February 2022, after consulting the pharmaceutical undertakings concerned in accordance with Article 4(4) of that regulation ('the undertakings concerned'), the Commission adopted the first contested decision. That decision stated that, in the context of the assessment of the first confirmatory application, the Secretariat-General of the Commission had re-examined DG Health's response to the initial request 1 and that, following that re-examination, 13 documents had been identified as falling within the scope of the request for access to documents, namely the 9 documents referred to above and 4 additional documents.

19. By the first contested decision, the Commission granted partial access to the documents referred to in paragraph 11 of the first judgment under appeal. More specifically, it granted wider partial access to some of those documents, disclosed previously, as well as partial access to other documents, which, until that point, had not been publicly disclosed, in a redacted form. [9] The redacted versions of those documents were attached to the first contested decision.

20. In the first contested decision, the Commission relied on the exceptions 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 concerned, in order to justify granting only partial access to the agreements at issue.

C. Case C-632/24 P

21. 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, two lawyers requested, 'on behalf of the 86 000 first petitioners of the platform https://dejavu/legal/' whom they represented and among whom were the appellants, 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 vaccines in the context of the COVID-19 pandemic ('initial request 2'). That letter also contained a request for information. In particular, initial request 2 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: first, all agreements signed by the Commission pursuant to Regulation 2020/521 and, in particular, agreements with Pfizer-BioNTech, Moderna, Johnson & Johnson and AstraZeneca; secondly, 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 (namely forename, surname, professional or institutional role) and,

9 See, for a more detailed account of the documents concerned, paragraph 12 of the first judgment under appeal.

thirdly, the declarations of direct or indirect interests between the representatives of the European Union referred to above and the producers, the investors and the financiers of vaccines and other medicinal products. [10]

22. By letter of 30 July 2021, the Director-General of DG Health replied to initial request 2, indicating that she had identified 46 documents corresponding to that request, namely 4 advance purchase agreements and 3 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 concerned, 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 appellants, 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 that regulation. 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, respectively, in the first indent of Article 4(2) and Article 4(3) of that regulation, and, for 6 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.

23. On 13 August 2021, the appellants submitted, on the basis of Article 7(2) of Regulation No 1049/2001, a confirmatory application requesting that the Commission reconsider its position with regard to all the documents to which access had been refused in whole or in part ('confirmatory application 2'). On 24 September 2021, the Commission informed the appellants that it was still not in a position to reply to confirmatory application 2. In the absence of a response

[10] See, for a more detailed account of initial application 2, paragraph 7 of the second judgment under appeal.

on that date, an implied decision rejecting confirmatory application 2 arose ('the second implied rejection decision'), in accordance with Article 8(3) of that regulation.

24. On 28 February 2022, and after consulting the pharmaceutical undertakings concerned in accordance with Article 4(4) of that regulation, the Commission adopted the second contested decision, pursuant to Article 4 of the same regulation ('the express decision'), which was notified to the appellants in English on 1 March 2022. The Commission stated that that notification had been made in the interests of promptness and that a French language translation would subsequently be communicated to the appellants.

25. In the express decision, the Commission noted that, in the context of the examination of confirmatory application 2, the Secretariat-General had reviewed DG Health's response to the initial request 2. Following that review, the list of documents corresponding to the request for access to documents had been amended and increased to 66 documents. In practical terms, that amendment resulted, first, 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 initial request 2 and, secondly, 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 4 advance purchase agreements and the 3 purchase agreements to which partial access had already been granted following the initial request 2. Thus, by the express decision, partial access was granted both to the advance purchase agreements and the purchase agreements referred to in paragraph 14 of the judgment under appeal and to the other documents also mentioned in paragraph 14.

26. In the express decision, the Commission considered 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 to the other documents listed in paragraphs 14 and 15 of the second judgment under appeal. It also took the view that, in the case of those agreements, the exception relating to the protection of commercial interests of the undertakings also applied. On 31 March 2022, the French version of the express decision was communicated to the appellants.

IV. Procedures before the General Court and the judgments under appeal

A. Case T-689/21

27. The appellants brought an action before the General Court for annulment of the first contested decision. In support of their action, they raised six pleas in law, alleging, first, that the exception relating to the protection of commercial interests of the undertakings was wrongly applied to information not covered by that

exception, and that there was a failure to state reasons in that regard and an inconsistent application of that exception; second, a failure to justify applying the exception relating to the protection of commercial interests of the undertakings to seven categories of provisions; third, that there was an inconsistent application of Regulation No 1049/2001 leading to an infringement of that regulation and of the principle of good administration, in that the Commission did not redact, to the same extent, provisions or information of the same kind, and that there was a failure to state reasons in that regard; fourth, infringement of Article 4(2) of that regulation, in that the Commission failed to take into account the overriding public interest in disclosure of the requested information, as well as a failure to state reasons in that regard; fifth, infringement of Article 42 and Article 52(3) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 10(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950; and, sixth, infringement of Articles 7 and 8 of that regulation, in that, by the first contested decision, the Commission redacted certain information which it had previously disclosed, and a failure to state reasons in that regard.

28. The General Court annulled the first contested decision in so far as the Commission refused wider access, first, to the definitions of the expressions 'wilful misconduct' in the advance purchase agreement concluded between it and AstraZeneca, and 'best reasonable efforts' in the advance purchase agreement and in the purchase agreement concluded between it and Pfizer-BioNTech; second, to the provisions on donations and resales and, third, to the provisions on indemnification in the advance purchase agreements and purchase agreements concluded between it and the relevant pharmaceutical undertakings for the purchase of COVID-19 vaccines on the basis of the first indent of Article 4(2) of Regulation No 1049/2001. The General Court dismissed the action as to the remainder.

B. Case T-761/21

29. The appellants brought an action before the General Court for annulment of the implied rejection decision 2, the express decision and the French version of the express decision of 31 March 2022. In support of their action, they 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.

30. By the second judgment under appeal, the General Court held that there was no longer any need to adjudicate on the head of claim seeking annulment of the implied decision 2 rejecting the confirmatory application 2. It annulled the second contested decision and the French version of that decision, in so far as the Commission refused wider access (i) to the declarations of absence of conflict of

interests signed by the members of the joint negotiation team, 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 undertakings for the purchase of those COVID-19 vaccines, such refusal being based on the first indent of Article 4(2) of that regulation. The General Court dismissed the action as to the remainder.

V. Procedures before the Court of Justice and forms of order sought

A. Case C-631/24 P

31. In support of its appeal in relation to the first contested decision, the Commission relies on four grounds of appeal, alleging, first, an error of law in the interpretation of the duty to state reasons as regards the redactions concerning the definitions of 'wilful misconduct' and 'best reasonable efforts' (paragraphs 39 to 46 of that judgment); secondly, errors in law in interpreting the first indent of Article 4(2) of Regulation No 1049/2001, breach of the obligation of motivation and distortion of the facts in considering unlawful the redactions of the provisions on indemnification (paragraphs 157 to 171 of that judgment); thirdly, errors in law in interpreting the first indent of Article 4(2) of that regulation and in the interpretation of the duty to state reasons as regards the redaction of the provisions on donations and resales (paragraphs 179 to 188 of the same judgment), and, fourthly, an error in law in considering as established a breach of Article 11(1) and Article 42 of the Charter (paragraphs 236 to 238 and 240 of the first judgment under appeal).

32. The appellants seek that the Court reject the appeal as being inadmissible in part and, in any event, as being unfounded, and order the Commission to bear the costs.

B. Case C-632/24 P

33. In support of its appeal in relation to the second contested decision, the Commission raises three grounds of appeal, alleging, first, a distortion of the evidence in the assessment of the need for the transmission of the personal data in question (paragraphs 63 to 92 of that judgment); secondly, an error of law in the interpretation of Article 9(1)(b) of Regulation 2018/1725, read in conjunction with Article 4(1)(b) of Regulation No 1049/2001 (paragraphs 52 to 92 of that judgment). The third ground of appeal, relating to the merits of the reasoning for the refusal of full access to the contractual clauses on indemnification (paragraphs 154 to 174 of that judgment), is divided into three parts, namely an error of law in the interpretation of the first indent of Article 4(2) of Regulation No 1049/2001, a breach of the obligation to state reasons and three instances of distortion of the evidence.

34. The appellants seek that the Court reject the appeal and the request to the Court to annul the second judgment under appeal, or, in the alternative, to reject the Commission's request to rule on the action at first instance in Case T-761/21 and to refer that case back to the General Court or, in the further alternative, to dismiss the Commission's request to the Court to itself reject the action at first instance in that case. The appellants seek, in any event, that the Court reject any other request from the Commission, including by way of costs and to order the Commission to bear its own costs as well as those incurred by the appellants, including the costs relating to the proceedings for interim measures.

35. The parties presented oral argument and replied to the questions put by the Court at the joint hearing for the two cases, held on 4 March 2026.

VI. Analysis

36. In accordance with the Court's request, this Opinion will focus on the analysis, first, of the second ground of appeal in Case C-632/24 P and, secondly, of the second ground of appeal in Case C-631/24 P and the third ground of appeal in Case C-632/24 P, which shall be examined together.

A. The second ground of appeal in Case C-632/24 P

37. By its second ground of appeal, the Commission submits that the General Court erred in law in the interpretation of Article 9(1)(b) of Regulation 2018/1725, read in conjunction with Article 4(1)(b) of Regulation No 1049/2001, in finding that it had to grant access to declarations of absence of conflict of interests, including the personal data of the members of the joint negotiation team and more specifically to their names.

1. The first part of the second ground of appeal, alleging a misinterpretation of the first condition laid down in Article 9(1)(b) of Regulation 2018/1725

(a) Arguments of the parties

38. The Commission submits that the General Court wrongly classified as a 'specific purpose in the public interest', within the meaning of Article 9(1)(b) of Regulation 2018/1725, the objective of ascertaining the impartiality of the members of the joint negotiation team.

39. According to the Commission, that objective cannot be linked to a purpose in the *public* interest. Although the impartiality of the officials of the Commission and of the Member States is a matter of public interest, verification of that impartiality by 'any individual' requesting access to the documents concerned would not serve such a public interest but rather the individual interest of that person, for example in order to satisfy his or her curiosity.

40. Moreover, the appellants have not established the existence of a *specific* purpose in the public interest, as set out in paragraph 71 of the second judgment under appeal. According to the Commission, the reasoning followed by the General Court is so general that it could apply to any request for disclosure of the personal data of officials of the Commission and the Member States in the context of any procedure relating to the management of the COVID-19 pandemic. Thus, on the basis of that reasoning, a specific purpose in the public interest is said to be presumed to be demonstrated in respect of the disclosure, for example, of the names of the Commission officials who participated in the drafting of a decision on the compatibility of State aid adopted to address the effects of that pandemic. Accordingly, the General Court is said to have misinterpreted the first condition laid down in Article 9(1)(b) of Regulation 2018/1725.

41. That conclusion cannot be called into question by the case-law of the General Court cited in paragraph 72 of the second judgment under appeal, according to which 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. [11] In that regard, the Commission submits, in the first place, that that case-law concerned Article 8(b) of Regulation (EC) No 45/2001, [12] which was replaced by Regulation 2018/1725, that provision requiring solely that the recipient of personal data 'establishes the necessity of having the data transferred'. In the second place, it submits that that case-law does not concern a general and abstract justification for the transmission of personal data, but a specific justification relating to the conduct of Members of the Parliament in the performance of their duties. In the third place, and in any event, that institution points out that the case-law of the General Court is not binding on the interpretation of EU law by the Court of Justice.

42. The Commission also considers that the General Court disregarded a significant difference between Case C-632/24 P and the case giving rise to the judgment in *ClientEarth*, [13] as regards the interpretation of the first condition laid down in Article 9(1)(b) of Regulation 2018/1725. Unlike in the latter case, the appellants did not maintain that the officials and servants of the Commission whose personal data are at issue were third parties capable of influencing the Commission's decision-making process because of possible links with industrial lobbies. In the present case, on the contrary, the representatives of the Commission and the Member States directly negotiated the agreements with the

11 See judgment of the General Court of 15 July 2015, *Dennekamp* v *Parliament* (T-115/13, EU:T:2015:497, paragraph 61).

12 Regulation 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 (OJ 2001 L 8, p. 1).

13 Judgment of 16 July 2015, *ClientEarth and PAN Europe* v *EFSA* (C-615/13 P, 'the judgment in *ClientEarth*' EU:C:2015:489).

representatives of the economic operators concerned, without the intervention of third parties likely to have such links. The General Court attempted to distinguish between the two cases by noting that, in the case which gave rise to the judgment in *ClientEarth*, the appellants had been able to provide evidence that would allow the impartiality of the experts concerned to be put in doubt since they knew their names. However, in that case, the experts had made their declarations of interests public, and therefore their identity was known. Moreover, the dispute did not concern the disclosure of declarations of absence of conflict of interests. The Commission adds that the fact that an applicant is or is not able to demonstrate the existence of a specific purpose in the public interest cannot have the effect of removing the very requirement that such a purpose be *specific*.

43. Moreover, the Commission considers that the General Court erred in finding that the disclosure of the names of the members of the joint negotiation team was *necessary* within the meaning of Article 9(1)(b) of Regulation 2018/1725. The General Court merely stated, in paragraph 73 of the second judgment under appeal, that '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 appellants could have ascertained that those members were not in a conflict-of-interests situation', without setting out the reasons why disclosure of that information would be the only means of enabling the appellants to verify that there was no conflict of interests. As recalled in paragraph 60 of the second judgment under appeal, in order to satisfy the condition of 'need', the party applying for access must demonstrate that the transmission of personal data is the most appropriate of the possible measures for attaining the objective which it pursued and that it is proportionate to that objective.

44. The Commission considers that, in the present case, the disclosure of those personal data to members of the public who do not perform any official duties is not necessary, since it is sufficient to allow the competent authorities access to them in order to carry out the required checks. Furthermore, and in any event, the objective consisting of ascertaining the impartiality of the members of the joint negotiation team has already been achieved by the disclosure of anonymised versions of the declarations of absence of conflict of interests, which enabled the appellants to verify that the Commission's officials had indeed complied with the obligations applicable in all public procurement procedures in the European Union.

45. The appellants dispute the merits of the arguments put forward by the Commission.

(b) Assessment

46. As a preliminary point, I would point out that, according to the Court's case-law, when examining the relationship between Regulations Nos 1049/2001 and 45/2001, the latter having been replaced by Regulation 2018/1725, for the

purpose of applying the exception under Article 4(1)(b) of Regulation No 1049/2001 to the case in point, it must be borne in mind that those regulations pursue different objectives. The first is designed to ensure the greatest possible transparency of the decision-making process of the public authorities and the information on which they base their decisions. It is thus designed to facilitate as far as possible the exercise of the right of access to documents, and to promote good administrative practices. The second is designed to ensure the protection of the freedoms and fundamental rights of individuals, particularly their private life, in the handling of personal data. [14]

47. Regulations No 1049/2001 and 2018/1725 do not contain any provisions granting one primacy over the other. In principle, their full application should be ensured. The only express link between those two regulations is established in Article 4(1)(b) of Regulation No 1049/2001, which provides for an exception to 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. [15]

48. Moreover, as stated in recital 5 of Regulation 2018/1725, whenever the provisions of that regulation follow the same principles as the provisions of Regulation (EU) 2016/679, [16] those two sets of provisions should be interpreted homogeneously, in particular because the scheme of Regulation 2018/1725 should be understood as equivalent to that of Regulation 2016/679.

49. In that context, as the Commission has rightly pointed out, pursuant to Article 9(1)(b) of Regulation 2018/1725, personal data are to be transmitted to recipients established in the European Union other than EU institutions and bodies only if, in accordance with the first condition laid down in that provision, 'the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest', contrary to Article 6(1) of Regulation No 1049/2001. [17]

50. In the present case, the appellants requested the disclosure of information relating to the identity of the members of the joint negotiation team. In the second

14 See judgment of 29 June 2010, *Commission* v *Bavarian Lager* (C-28/08 P, EU:C:2010:378, paragraph 49).

15 See, to that effect, judgment of 29 June 2010, *Commission* v *Bavarian Lager* (C-28/08 P, EU:C:2010:378, paragraph 57).

16 Regulation of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1).

17 Under that provision, 'applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable the institution to identify the document. The applicant is not obliged to state reasons for the application'.

contested decision, the Commission concluded that, in accordance with Article 4(1)(b) of Regulation No 1049/2001, access to those personal data could not be granted to them.

51. In its appeal in Case C-632/24 P, the Commission submits that, although the impartiality of the officials of the Commission and of the Member States is a matter of public interest, verification of that impartiality by 'any individual' requesting access to the documents concerned cannot be regarded as relating to a *public* interest, but rather as serving the individual interest of that person, for example in order to satisfy his or her curiosity.

52. In my view, such an argument cannot succeed. Article 9(1)(b) of Regulation 2018/1725 refers to the transmission of personal data to 'recipients'. Article 3(13) of that regulation defines a 'recipient' as a natural person. It follows that that regulation does not preclude, in principle, the possibility that 'any individual' may request the disclosure of such data for the purposes of ascertaining the impartiality of Commission officials. On the contrary, that regulation expressly recognises the possibility for any natural person to have access to personal data provided that he or she satisfies all the conditions laid down in Article 9(1)(b). Accordingly, contrary to the Commission's assertion, access to the personal data necessary for ascertaining the impartiality of the members of the joint negotiation team cannot be reserved solely to the competent authorities.

53. The Commission also submits that the General Court was wrong to hold that the appellants had demonstrated the existence of a *specific* purpose in the public interest. In that regard, it refers to paragraph 71 of the second judgment under appeal, in which the General Court held that 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 …, 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'.

54. In my view, the General Court did not err in law. As it noted in paragraph 70 of the second judgment under appeal, 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. Moreover, according to recital 28 of Regulation

2018/1725, [18] 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. In the present case, that requirement of transparency was all the more necessary given that urgent decisions had to be adopted in order to tackle the COVID-19 pandemic.

55. In that regard, the Court of Justice has already held that where a national law, in adopting the principle of transparency of declarations of interest, seeks to ensure that the public interest takes precedence when decisions are taken by persons working in the public service, to guarantee the impartiality of those decisions and to prevent situations of conflict of interests and the emergence and spread of corruption in the public service, such objectives, in that they seek to strengthen the safeguards for probity and impartiality of public sector decision makers, to prevent conflicts of interest and to combat corruption in the public sector, are undeniably objectives of public interest and, accordingly, legitimate. Indeed, ensuring that public sector decision makers perform their duties impartially and objectively and preventing them from being influenced by considerations relating to private interests have the aim of guaranteeing the proper management of public affairs and public property. [19]

56. Similarly, with regard to the pharmaceutical industry, Article 26(1)(a) of Regulation (EC) No 726/2004 [20] provides that, in the context of pharmacovigilance, the European Medicines Agency, in collaboration with the Member States and the Commission, is to set up and maintain a European medicines web-portal for the dissemination of information on medicinal products authorised in the European Union and that, by means of that portal, that agency must make public at least, inter alia, the names of members of the committees referred to in points (a) and (aa) of Article 56(1) of that regulation and the

18 According to that recital, 'when recipients established in the Union other than Union institutions and bodies would like to have personal data transmitted to them by Union institutions and bodies, those recipients should demonstrate that it is necessary to have the data transmitted to these recipients either for the performance of their task carried out in the public interest or in the exercise of official authority vested in them. Alternatively, those recipients should demonstrate that the transmission is necessary for a specific purpose in the public interest and the controller should establish whether there is any reason to assume that the data subject's legitimate interests might be prejudiced. In such cases, the controller should demonstrably weigh the various competing interests in order to assess the proportionality of the requested transmission of personal data. The specific purpose in the public interest could relate to the transparency of Union institutions and bodies'.

19 See judgment of 1 August 2022, *Vyriausioji tarnybinės etikos komisija* (C-184/20, EU:C:2022:601, paragraphs 74 to 76).

20 Regulation of the European Parliament and of the Council of 31 March 2004 laying down Community procedures for the authorisation and supervision of medicinal products for human and veterinary use and establishing a European Medicines Agency (OJ 2004 L 136, p. 1), as amended by Regulation (EU) No 1027/2012 of the European Parliament and of the Council of 25 October 2012 (OJ 2012 L 316, p. 38).

members of the coordination group, together with their professional qualifications and with the declarations referred to in Article 63(2) of that regulation. [21]

57. According to the Commission, the reasoning adopted by the General Court is so general that it could apply to any request for disclosure of personal data of officials of the Commission and the Member States in the context of any procedure relating to the management of the COVID-19 pandemic. However, it seems to me that the General Court set out to the requisite legal standard, in paragraph 71 of the second judgment under appeal, the reasons why, in the specific context of that pandemic, the appellants had demonstrated the existence of a specific purpose in the public interest.

58. As regards the specific nature of the public interest objective pursued, the Commission clarified at the hearing that, within the framework of the contract negotiation process with the undertakings concerned, the joint negotiating team reported to the steering board, which was responsible for taking the relevant decisions. Accordingly, it maintained that verifying the impartiality of officials operating at a technical level was not of the same importance as verifying the impartiality of those exercising higher decision-making or hierarchical responsibilities. In that regard, it seems important to me to emphasise that the requirement of impartiality applies to Commission officials at all stages of the decision-making process, including when they are involved in a body whose activity is primarily technical in nature.

59. As regards the judgment of the General Court of 15 July 2015, *Dennekamp* v *Parliament*, [22] referred to in paragraph 72 of the second judgment under appeal, it should be noted that the justification for the transfer of personal data may be general in nature, in the sense that it is not specific to a particular applicant, in particular in the context of the COVID-19 pandemic, in which the vaccine strategy concerned all EU citizens.

60. Lastly, the Commission considers that the judgment in *ClientEarth*, to which the General Court referred in paragraphs 90 and 91 of the second judgment under appeal, is not relevant in the present case, in so far as the appellants did not maintain that the officials and servants of the Commission whose personal data are at issue were third parties capable of influencing the Commission's decision-making process because of possible links with industrial lobbies. However, as the General Court noted in paragraph 91 of the second judgment under appeal, the appellants in the case which gave rise to the judgment in *ClientEarth* had been informed of the names of the experts concerned and had obtained access to their

21 The final subparagraph of that provision provides that 'members of the Management Board, members of the committees, rapporteurs and experts who participate in meetings or working groups of the Agency shall declare, at each meeting, any specific interests which could be considered to be prejudicial to their independence with respect to the items on the agenda. *These declarations shall be made available to the public*' (emphasis added).

22 T-115/13, EU:T:2015:497, paragraph 61.

declarations of interests, unlike in Case C-632/24 P. First, as the General Court rightly pointed out, the appellants did not know the identities of the experts designated by the Member States 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. Secondly, in paragraph 58 of the judgment in *ClientEarth*, the Court of Justice held that, although the appellants had obtained disclosure to them of the names, biographies and declarations of interests of the experts who submitted comments on European Food Safety Authority (EFSA) draft guidance relating to scientific documents to be included in applications for authorisation to place plant protection products on the market, obtaining the information which would have enabled them to identify, with respect to each of the comments, which of the external experts was its author was necessary so that the impartiality of each of those experts could be specifically ascertained. Consequently, the Court of Justice held, in essence, that even the disclosure of the names of those experts might not be sufficient under Article 9(1)(b) of Regulation 2018/1725.

61. As regards the need, for the purposes of that provision, to disclose the names of the members of the joint negotiation team, the Commission recalls the Court's case-law according to which derogations from and limitations on the protection of personal data should apply only in so far as is strictly necessary, it being understood that where there is a choice between several measures appropriate to meeting the legitimate objectives pursued, recourse must be had to the least onerous of those measures, which involves examining whether those objectives could not reasonably be achieved in an equally effective manner by other means less prejudicial to the fundamental rights of the data subjects. [23]

62. According to the Commission, the disclosure of those personal data to members of the public who do not perform any official duties is not necessary, since it is sufficient to allow the competent authorities access to them in order to carry out the necessary checks. However, as stated in point 50 of this Opinion, Article 9(1)(b) of Regulation 2018/1725 expressly provides that natural persons, including members of the public, may be given those data, provided that the conditions laid down in that provision are met. The Commission adds that, in any event, since the disclosure of anonymised versions of the declarations of absence of conflict of interests had already made it possible to achieve the objective of ascertaining the impartiality of the members of the joint negotiation team, the General Court wrongly considered, in paragraph 73 of the second judgment under appeal, that the disclosure of the 'surnames, forenames and professional or institutional roles of the members of the joint negotiation team' was necessary.

63. However, the Commission does not explain why the disclosure of anonymised versions of the declarations of absence of conflict of interests is sufficient for the purposes of examining the impartiality of the members of the

[23] See, to that effect, judgment of 21 March 2024, *Landeshauptstadt Wiesbaden* (C-61/22, EU:C:2024:251, paragraphs 83 and 84 and the case-law cited).

joint negotiation team. By definition, such anonymised versions do not make it possible to carry out an external verification to check the accuracy and/or completeness of the information contained therein. Moreover, that approach appears to be at odds with the judgment in *ClientEarth*, in which the Court held that even the disclosure of the names of the experts concerned and their declarations of interests did not make it possible for the impartiality of each of those experts to be *specifically* ascertained. [24]

64. In the light of all the foregoing, I propose that the first part of the second ground of appeal should be rejected as unfounded.

2. The second part of the second ground of appeal, alleging a misinterpretation of the second condition laid down in Article 9(1)(b) of Regulation 2018/1725

(a) Arguments of the parties

65. The Commission submits, by its first complaint, that the factual circumstances established in the second judgment under appeal demonstrate that the interference arising from the disclosure of the personal data in question would be particularly serious for the members of the joint negotiation team. In that regard, it submits that the General Court itself recognised, in paragraph 77 of that judgment, the particular context in which those members 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. The General Court inferred from this, in that paragraph 77, that the exposure of the members of the joint negotiation team to unsolicited external contacts following the disclosure of their identities was not merely hypothetical. The Commission claims that the serious and highly probable consequences for the privacy of the relevant officials that would result from the disclosure of their identities to the general public should not be underestimated. In its view, such disclosure would expose them to unsolicited external contacts which would not be limited to contact from the press, but could also include harm to their physical integrity and forms of harassment, in particular by supporters of ‘conspiracy theories’, whose numbers are not insignificant in the context of the COVID-19 pandemic.

66. By its second complaint, the Commission recalls that, in paragraph 80 of the second judgment under appeal, the General Court acknowledged that the second contested decision had taken into consideration the technical role played by the members of the joint negotiation team in the award process. Those public servants had no decision-making power within their institution and did not occupy senior positions, and therefore the objective of ascertaining their impartiality is of limited importance.

[24] See point 57 of this Opinion.

67. By its third complaint, the Commission submits that the objective of ascertaining the impartiality of the members of the joint negotiation team has already been achieved by the disclosure of anonymised versions of the declarations of absence of conflict of interests. The signing of such declarations by all members of that team establishes, in itself, compliance with their duties of impartiality and independence. The General Court held, though, in paragraph 84 of the second judgment under appeal, that 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. The Commission argues that the General Court wrongly assumes that any citizen would be able, at any time, to act as a sort of 'informal police officer' tasked with investigating the impartiality of officials in the performance of their technical duties. However, the legal order of the European Union and that of the Member States entrusts this task to the competent authorities, such as disciplinary bodies, police authorities and prosecutors, which offer appropriate data protection safeguards for the data subjects during the investigation, whereas, conversely, an ordinary citizen would not be able to ensure such safeguards. It follows that the General Court should have concluded that the particularly serious interference with the private life of the members of the joint negotiation team should have taken precedence over the objective, as put forward by the appellants, of ascertaining the impartiality of those members.

68. The appellants dispute the foundation of the arguments put forward by the Commission.

(b) Assessment

69. According to the Court's settled case-law, it follows from the second subparagraph of Article 256(1) TFEU, the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, and Article 168(1)(d) and Article 169(2) of the Rules of Procedure of the Court of Justice that an appeal must indicate precisely the contested paragraphs of the judgment which the appellant seeks to have set aside and the legal arguments specifically advanced in support of the appeal, failing which the appeal or the ground of appeal concerned is to be inadmissible. In that regard, the Court has held that an appeal lacking any coherent structure which simply makes general statements and contains no specific indications as to the points of the contested decision which may be vitiated by an error of law must be dismissed as clearly inadmissible. [25]

70. In the present case, I note that the first two complaints raised by the Commission, relating to the seriousness of the interference and the limited significance of the specific purpose in the public interest, merely reiterate the

[25] See, to that effect, judgment of 18 December 2025, *Hamoudi* v *Frontex* (C-136/24 P, EU:C:2025:977, paragraphs 54 and 55 and the case-law cited).

reasoning followed by the General Court, without challenging it and without identifying precisely which paragraphs of the second judgment under appeal are allegedly vitiated by an error of law. Accordingly, those two complaints must be rejected as inadmissible.

71. As regards the third complaint, regarding weighing up the interests involved, the Commission submits that the objective of ascertaining the impartiality of the members of the joint negotiation team has already been achieved by the disclosure of anonymised versions of the declarations of absence of conflict of interests and that it is for the competent authorities alone, such as disciplinary bodies, police authorities and prosecutors, to have access to personal data which are necessary for the purposes of ascertaining the absence of a conflict of interests.

72. In so doing, the Commission repeats arguments similar to those it put forward in connection with the first part of the second ground of appeal, which, in my view, should be rejected in the light of the Court's case-law. [26]

73. The Commission also refers to the judgment of 22 November 2022, *Luxembourg Business Registers*, [27] in which the Court, in paragraph 83, held that, as regards balancing the seriousness of the interference resulting from the general public's access to information on beneficial ownership with the fundamental rights enshrined in Articles 7 and 8 of the Charter, combating money laundering and terrorist financing is as a priority a matter for public authorities and for entities such as credit or financial institutions, which, by reason of their activities, are subject to specific obligations in that regard. However, the present case is based on a different legal framework in that the actual verification of the impartiality of Commission officials can be carried out by both the competent authorities and by the general public.

74. Therefore, I am of the opinion that the third complaint must be rejected as unfounded.

75. It follows that the second part of the second ground of appeal must be rejected as in part unfounded and in part inadmissible.

76. In those circumstances, I propose that the second ground of appeal in Case C-632/24 P should be rejected in its entirety.

26 See points 62 and 63 of the present Opinion.

27 C-37/20 and C-601/20, EU:C:2022:912.

B. The second ground of appeal in Case C-631/24 P and the third ground of appeal in Case C-632/24 P

77. According to the Court's case-law, Article 1 of Regulation No 1049/2001 provides that the purpose of that regulation is to confer on the public as wide a right of access as possible to documents of the EU institutions, subject to a system of exceptions based on reasons of public or private interest, which, departing from the principle laid down in that article, must be *interpreted and applied strictly*. Among the exceptions to the right of access is that set out in the first indent of Article 4(2) of that regulation, which states that 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. If the institution concerned decides to refuse access to a document which it has been asked to disclose, it must, in principle, explain how disclosure of that document could specifically and actually undermine the interest protected by an exception provided for in Article 4 of that regulation upon which it is relying. Moreover, the risk of the interest being undermined must be reasonably foreseeable and must not be purely hypothetical. [28]

78. In the present case, it is apparent from the contested decisions 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. [29]

79. The second ground of appeal in Case C-631/24 P and the third ground of appeal in Case C-632/24 P, which are, in essence, similar, are divided into three parts, alleging, first, the possibility of adopting strategic behaviour against the undertakings concerned, secondly, the competitive advantage conferred on the competitors of those undertakings and, thirdly, repercussions on the reputations of those undertakings.

1. The first part, alleging the possibility of adopting strategic behaviour against the undertakings concerned

(a) Arguments of the parties

80. The Commission submits that, in paragraphs 157 to 161 of the first judgment under appeal and paragraphs 160 to 164 of the second judgment under

[28] See judgment of 16 January 2025, *Commission* v *Pollinis France* (C-726/22 P, EU:C:2025:17, paragraphs 61 to 63 and the case-law cited).

[29] See paragraph 146 of the first judgment under appeal and paragraph 150 of the second judgment under appeal.

appeal, the General Court rejected the reason which the Commission put forward in the contested decisions, according to which 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 of aim of receiving indemnification linked to use of its vaccine.

81. The Commission submits, first, that the finding made by the General Court, in paragraph 158 of the first judgment under appeal and in paragraph 161 of the second judgment under appeal, [30] does not call into question the reason relied on in the contested decisions to justify the refusal of a more extensive disclosure of the provisions on the indemnification of the undertakings concerned, namely the use that an applicant could make of those provisions in the context of an action for damages, irrespective of the fact that those provisions differ from the rules governing the contractor's liability.

82. Secondly, the Commission emphasises that the statement in paragraph 159 of the first judgment under appeal and paragraph 162 of the second judgment under appeal [31] is vitiated by a failure to state reasons and is manifestly incorrect. In its view, the commercial interests of the undertakings concerned lie in the need to avoid an increase in actions for damages brought against them. Even if the interest at issue were limited to the mere objective of *avoiding* such actions, those paragraphs of the judgments under appeal do not explain why such an interest is not *deserving of protection*. Furthermore, the case-law cited in the second sentence of each of those paragraphs concerns potential consequences regarding costs in the context of a legal action, whereas the present cases concern not only the economic consequences of such an action, but also the effects on the manufacturer's reputation in the event of an increase in litigation. [32]

30 In those paragraphs, the General Court held that, 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 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), that right of action being independent of the existence and content of the provisions on indemnification.

31 The General Court held, in those paragraphs, that the interest of the undertakings concerned in avoiding 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.

32 In these sentences, the General Court stated that '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).'

83. Thirdly, the Commission submits that paragraph 160 of the first judgment under appeal and paragraph 163 of the second judgment under appeal [33] are also incorrect and distort the content of the contested decisions. The Commission clearly stated in those decisions that a precise knowledge of the boundaries of the contractor's liability would allow for strategic behaviour against the undertakings concerned.

84. The appellants submit that the first part of the present grounds of appeal must be rejected as being inadmissible in part, and, in any event, as being unfounded. The appellants claim that that first part is without foundation.

(b) Assessment

85. As a preliminary point, I would point out that, according to the Court's case-law, access to commercially sensitive information concerning the commercial strategies of the undertakings concerned, their sales figures, their market shares or their business relations, may undermine the protection of the commercial interests of those undertakings, within the meaning of the first indent of Article 4(2) of Regulation No 1049/2001. [34]

86. As regards paragraph 158 of the first judgment under appeal and paragraph 161 of the second judgment under appeal, a distinction must be drawn between, on the one hand, the conditions governing the liability of the undertakings concerned, which fall within the scope of the national legislation transposing Directive 85/374, [35] and, on the other, the mechanisms for indemnification provided for in favour of those undertakings, consisting in the reimbursement by the Member States of those undertakings of the sums which they might be ordered to pay to third parties on the basis of their non-contractual liability.

87. In that regard, although the General Court, in the abovementioned paragraphs of the judgments under appeal, rightly noted that the bringing of actions for damages is liable to entail high costs for the undertakings concerned, including where those actions are subsequently dismissed as unfounded, the fact remains that the provisions on indemnification are not such as to alter the

33 According to those paragraphs, there is nothing in the contested decisions 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.

34 See, to that effect, judgment of 27 February 2014, *Commission* v *EnBW* (C-365/12 P, EU:C:2014:112, paragraph 79 and the case-law cited).

35 In that regard, as the Court has observed, Articles 1 and 4 of Directive 85/374, read in the light of the first recital thereof, lay down the principle that the producer can incur no-fault liability founded on the product defect, defined, according to Article 6 thereof, as a failure to provide the safety which consumers are entitled to expect from the product in question, taking all circumstances into account (see, to that effect, judgment of 26 March 2026, *Sanofi Pasteur*, C-338/24, EU:C:2026:248, paragraph 29).

conditions under which third parties who could have been harmed by a defective vaccine may bring actions for damages against those undertakings. The question of indemnification arises only at a later stage, once the liability of the undertaking concerned is established on account of the product in question being defective, in order to determine whether the damages paid to the victims must, ultimately, be reimbursed by a Member State. In those circumstances, I am of the opinion that the General Court did not err in law in finding that the right of third parties to bring an action remains independent of both the existence and the content of the provisions on indemnification. That finding alone is sufficient, in my view, to reject the first part of the present grounds of appeal.

88. As regards paragraphs 159 and 160 of the first judgment under appeal and paragraphs 162 and 163 of the second judgment under appeal, I note that they are provided for the sake of completeness, as is apparent from the use of the word 'furthermore'. Accordingly, the arguments raised by the Commission against those paragraphs of the judgments under appeal must be rejected as ineffective.

89. In any event, I would point out that, according to the Court's case-law, a mere unsubstantiated claim relating to a general risk of misuse cannot lead to data contained in a document to which access is requested being regarded as falling within the scope of the exception laid down in the first indent of Article 4(2) of Regulation No 1049/2001 where additional details have not been adduced, concerning the nature, purpose and scope of the data, that are capable of enabling the Courts of the European Union to understand how disclosure of those data would be likely concretely and reasonably foreseeably to undermine the commercial interests of the persons concerned by those data. [36] In the present case, the Commission's argument alleging a risk of an increase in litigation in the event of full disclosure of the indemnification clause does not appear to be substantiated and is, therefore, hypothetical. [37]

90. I therefore propose that the first part of the present grounds of appeal should be rejected as being, in part, unfounded, and, in part, ineffective.

36 See, to that effect, judgment of 29 October 2020, *Intercept Pharma and Intercept Pharmaceuticals* v *EMA* (C-576/19 P, EU:C:2020:873, paragraph 53 and the case-law cited).

37 Thus, in its appeal in Case C-631/24 P, the Commission submits that it provided figures in its defence before the General Court in the case which gave rise to the first judgment under appeal. However, it is apparent from the passage referred to in those pleadings that the Commission merely stated that 'the risk of a massive litigation brought by consumers against vaccines producers is not abstract and, in view of the fact that as of today more than 70% of the Europeans (i.e. 447.2 million people) have received at least one dose of vaccine, this risk consists of very significant financial consequences for a single contractor'.

2. The second part, alleging the competitive advantage conferred on competitors of the undertakings concerned

(a) Arguments of the parties

91. The Commission notes that the General Court rejected, in paragraphs 162 to 166 of the first judgment under appeal and in paragraphs 165 to 169 of the second judgment under appeal, the second ground relied on in the contested decisions, according to which full disclosure of the provisions on indemnification, in particular those defining the exact conditions under which indemnification by the Member State is excluded, 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.

92. In that regard, the Commission disputes the General Court's assessment, in paragraph 163 of the first judgment under appeal and in paragraph 166 of the second judgment under appeal, that the provisions on indemnification were in the 'public domain' before the adoption of the contested decisions. [38]

93. The Commission also considers that paragraph 164 of the first judgment under appeal and paragraph 167 of the second judgment under appeal, according to which all the agreements at issue contain a provision on indemnification which lists, 'in a broadly similar manner', the specific principal situations in which the indemnification of the undertaking concerned by the Member State is excluded, constitute an excessive simplification and the source of an erroneous conclusion, compared with the content of the clauses described in paragraph 155 of the first judgment under appeal and in paragraph 158 of the second judgment under appeal.

94. As regards paragraph 165 of the first judgment under appeal and paragraph 168 of the second judgment under appeal, the Commission submits that the conclusion reached by the General Court is also incorrect. In that regard, it refers to the arguments which it has already put forward in the first part of the present grounds of appeal. Moreover, the General Court distorted the facts since, in the contested decisions, the competitive advantage described by the Commission was not only that of operators who had concluded contracts with it, but also that of their other competitors.

[38] According to those paragraphs of the judgments under appeal, 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 decisions.

95. The appellants in both cases submit that the second part of the present grounds of appeal must be rejected.

(b) Assessment

96. First, as regards the Commission's argument that the General Court wrongly considered that the provisions relating to indemnification were in the 'public domain', I note that the Commission asks the Court of Justice to carry out a new assessment of the facts, whereas, except where an appellant relies on a distortion of the facts, which is not the case here, the arguments which it raises relating to the facts must be regarded as inadmissible. [39]

97. Secondly, as regards the Commission's argument that the General Court wrongly classified the provisions on indemnification in the various agreements as 'broadly similar', I note that that argument also concerns the General Court's assessment of the facts. Accordingly, such an argument must be declared inadmissible. In any event, the reasoning followed by the General Court in paragraph 164 of the first judgment under appeal and paragraph 67 of the second judgment under appeal does not appear to contradict that set out in paragraph 155 of the first judgment under appeal and paragraph 158 of the second judgment under appeal, in which the General Court noted that most of the situations remain 'broadly similar in the agreements at issue' as regards the specific situations in which the indemnification by the Member State is not applicable.

98. Thirdly, as regards paragraph 165 of the first judgment under appeal and paragraph 168 of the second judgment under appeal, first, it is sufficient to note that the arguments put forward in the context of the first part of the present grounds of appeal must be rejected, with the result that the General Court's conclusion in those paragraphs is not incorrect. Secondly, section 2.1.4. of the first contested decision and section 2.2.4 of the second contested decision [40] referred to 'competitors that do not have any contracts with indemnification clauses'. However, it is clear from paragraph 162 of the first judgment under appeal and from paragraph 165 of the second judgment under appeal that the General Court indicated that the second ground relied upon in the contested decisions for refusing full disclosure of the provisions on indemnification referred to the

39 See judgment of 12 September 2024, *Anglo Austrian AAB* v *ECB and Far-East* (C-579/22 P, EU:C:2024:731, paragraph 120 and the case-law cited).

40 Those sections stated that 'a full disclosure of the contractual provisions on indemnification, in particular of those concerning the exact conditions which do *not* allow the contractor to have recourse to indemnification, would inevitably reveal to the contractor's competitors – namely to all pharmaceuticals companies, even those that do not produce vaccines – the "weak points" of the contractor's coverage of its possible liability, and provide them with a competitive advantage that they could further exploit (with advertisements, comparative publicity etc). This would clearly occur for those competitors that do not have any contracts with indemnification clauses, but that are publicly known as being covered by a general insurance in case of liability from defective products'.

competitors of the undertaking concerned, including those not producing vaccines. Consequently, the General Court correctly took into account the Commission's ground. Furthermore, in paragraph 165 of the first judgment under appeal and paragraph 168 of the second judgment under appeal, the General Court held that, since all the undertakings concerned obtained, for an identified and legitimate reason, a provision on indemnification, there was nothing in the contested decisions 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. By using the words 'over each other', the General Court thus distinguished between the undertakings concerned and other pharmaceutical undertakings, including those not producing vaccines, thereby addressing the Commission's line of argument. Accordingly, the General Court did not distort the facts before it.

99. Consequently, I am of the opinion that the second part of the present grounds of appeal must be rejected as being, in part, inadmissible and, in part, unfounded.

3. The third part, alleging repercussions for the reputations of the undertakings concerned

(a) Arguments of the parties

100. The Commission submits that, as regards the third argument put forward in the contested decisions, 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, the General Court rejected that argument in paragraph 168 of the first judgment under appeal and in paragraph 171 of the second judgment under appeal, referring to the same arguments as those set out, respectively, in paragraphs 163 to 165 and paragraphs 166 to 168 of those judgments. According to the Commission, such a reference, formulated in such general terms, would be contrary to the General Court's obligation to state reasons.

101. Moreover, the General Court is said to have distorted the evidence before it and the context in which the contested decisions were adopted, by failing to take account of the fact that the documents to which access was requested were not unilateral Commission acts, but commercial agreements likely to contain confidential information concerning both the undertakings concerned and their business relations, and that those agreements pursued the specific purpose of governing the mutual obligations between the contracting parties as regards the delivery of a commercial product to the Member States.

102. The appellants are of the view that the third part of the present grounds should be rejected as being partially inadmissible and, in any event, as being unfounded. The appellants dispute the arguments put forward by the Commission.

(b) Assessment

103. As regards the alleged failure to state reasons in the judgments under appeal as regards the repercussions for the reputations of the undertakings concerned with consumers and with their potential business partners, I would point out that, in accordance with the Court's settled case-law, the obligation to state reasons does not require the General Court to provide an account that follows exhaustively and one by one all the arguments articulated by the parties to the case, since the reasoning may be implicit, on condition that it enables the persons concerned to understand the grounds of the General Court's judgment and provides the Court of Justice with sufficient information to exercise its powers of review on appeal. [41]

104. It is clear from paragraph 168 of the first judgment under appeal and from paragraph 171 of the second judgment under appeal that the General Court considered that the Commission's argument which relied on the repercussions on the reputation of the undertakings concerned was unfounded, in so far as it is based on the same reasons relating to the risk of commercial interests being undermined as those already relied on in the second part of the present grounds of appeal. Therefore, the reasoning contained in those paragraphs establishes, sufficiently in law, the reasons why the Court rejected this argument. It follows that those paragraphs are not vitiated by insufficient reasoning.

105. Moreover, as regards the allegation that the General Court gave an incomplete presentation of the relevant facts, by failing to take into consideration the context or the commercial nature of the agreements at issue, the Commission has not identified any passage in the judgments under appeal in which the General Court allegedly distorted the facts. Therefore, that allegation must be dismissed as inadmissible. In any event, I note that, in paragraph 106 of the second judgment under appeal, the General Court observed that, with regard to the plea concerning the inapplicability of the exception relating to the protection of the commercial interests of the undertakings, the agreements at issue were 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 of that judgment. In paragraph 33 of the first judgment under appeal, the General Court referred to the same case-law.

106. Accordingly, I consider that the third part of the present grounds of appeal must be rejected as being, in part, unfounded, and, in part, inadmissible.

41 See judgment of 20 June 2024, *EUIPO* v *Indo European Foods* (C-801/21 P, EU:C:2024:528, paragraph 85 and the case-law cited).

107. In those circumstances, the second ground of appeal in Case C-631/24 P and the third ground of appeal in Case C-632/24 P appear to me to be partly inadmissible and partly unfounded.

VII. Conclusion

108. In the light of the foregoing considerations, I propose that the Court of Justice should reject the second ground of appeal in Case C-631/24 P and the second and third grounds of appeal in Case C-632/24 P.