



## The reimbursed price fixed by the government (PVL) is considered a trade secret

*Judgment of the High Court of Justice of the Canary Islands of 28 March 2023*

### Background

In 2021, the Hospital Dr. Negrín of Gran Canaria started a procurement process for the supply of the active principles dupilumab and sarilumab by means of a negotiated procedure without publicity for exclusivity reasons. The dupilumab lot was not awarded. However, in the award resolution for the sarilumab lots, not only the information related to sarilumab was included. The base bidding budget broken down by units of the dupilumab lot that had not been awarded was also made public, and the unit price mentioned coincided with the reimbursed price (PVL) of dupilumab.

An administrative appeal was filed against said resolution, arguing that the unit price of dupilumab should not be published in the award resolution for the supply of Sarilumab since the dupilumab lot had not been awarded. The appeal, prepared by our associate Joan Carles Bailach, argued that the PVL of dupilumab constituted a trade secret, as it is based on confidential information. The Administrative Court for Public Tenders of the Canary Islands (ACPT) dismissed the appeal for lack of locus standi. This decision was appealed before the High Court of Justice of the Canary Islands.

### The position of the High Court of Justice of the Canary Islands

The High Court of Justice upheld the appeal and, regarding the merits of the case, stated that “pharmaceutical companies have a legitimate interest in relation to the reimbursed price

of medicinal products, which is obtained from reserved information.”

According to the Court, the disclosure of the PVL can cause serious damage to the company’s capacity to compete, and “said price should be considered a trade secret worthy of protection.”

The High Court affirmed that the ACPT wrongly understood that the appellant lacked locus standi to appeal, given that what the appellant intended was to “protect a trade secret exposed at potential risk by the administrative action of disclosing data of a lot in which no company participated.” Therefore, the Court considered that the appellant was sufficiently entitled to appeal against the award resolution.

Regarding the information that should appear in award resolutions for public tenders, the Court is clear: the regulations governing the advertising of public tenders do not require the publication of the unit price of the medicinal products being acquired, and it is acceptable to publish only the total price of the contract without a breakdown of the units acquired.