



Capsulas

Transparency of COVID-19 vaccines price

Judgment of the Contentious-Administrative Chamber of the National High Court of 22 December 2023

Background

The origin of this judgment dates to the request for access to public information regarding the price of the Covid-19 vaccines, the number of doses purchased, and copies of the contracts signed with the supplying pharmaceutical companies.

The Ministry of Health granted partial access to the overall data on the number of doses purchased from each company but denied access to the rest of the information. After the relevant complaint was filed, the Council for Transparency and Good Governance (CTBG) agreed to grant access to the requested contracts “with the exclusion or limitation of that specific part of the information that is undoubtedly confidential because it affects the economic, technical and commercial interests of the companies concerned, and upon justification”.

Judgment at first instance

In response to the disagreement with the CTBG’s decision, the Ministry of Health lodged a contentious-administrative appeal. First, the Ministry of Health pointed out that the unit price of the vaccines is part of the procurement agreements concluded by the European Commission and that such agreements incorporate express confidentiality clauses. Secondly, it argued that disclosing the requested information would be detrimental to country’s external relations. Since the agreements concluded by the European Commission are

binding on all Member States and, therefore, failure to comply with them would generate mistrust and loss of reliability for Spain.

The Central Contentious-Administrative Court dismissed the appeal and upheld the CTBG’s decision. The Court considered that the confidentiality clauses included in the European Commission’s vaccine procurement agreements could not be understood as absolute confidentiality and that, in this case, the public interest in knowing this information should prevail. Furthermore, it emphasised that the Ministry of Health had already provided this information in the past.

Finally, it pointed out that the Ministry of Health had not adequately and proportionately justified the extent to which disclosure of the requested information could cause actual and not hypothetical damage to Spain’s interests vis-à-vis other Member States or to Spain’s credibility.

The position of the Contentious-Administrative Chamber of the National High Court

The Contentious-Administrative Chamber of the National High Court overturns the lower court judgment and upholds the position of the Ministry of Health.

The Chamber upholds the arguments used by the Ministry of Health and confirms that the procurement agreements of the European Commission were classified as “sensitive” and their publication was done “censoring, among



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other information, that relating to price agreements". According to the Chamber, this fact cannot be disregarded by the lower court's judgment, as it pertains to Spain's compliance with its international obligations.

Regarding the precedent invoked by the judgment of the Court of First Instance, the Chamber points out that "it is wrong to bring here an administrative precedent that contradicts the classification of the documents in which the information originally appeared as sensitive, and in which the content of the agreements on the purchase prices of the vaccines has been censured. This would be equivalent to promoting a repetitive noncompliance of the obligations entered into by Spain. "

In relation to the conflict between public and private interest, which stems from the potential disclosure of the requested information, the Chamber is clear: disclosing the information would jeopardise the European Commission's negotiating position with the manufacturers, if no specific interest in such disclosure has been justified. The Chamber reinforces its statement by relying on several judgments of the General Court of the European Union, which upheld refusals to provide information on the price of vaccines. In these cases, the GC stated that the refusal to provide this information is legitimate "in so far as its disclosure puts at risk the competitive position of a producer in a highly competitive scenario involving pharmaceutical laboratories (...) there being no justification for an overriding public interest in the disclosure of such information".

Lastly, these General Court rulings assert that the applicant must demonstrate why the public interest demanded the disclosure of the requested information, even at the expense of weakening the negotiating position of the European Commission.