



ACCESS DENIED – ONE YEAR ON

On January 18th 2023, [Global Health Advocates, together with its partner STOPAIDS published a report series](#) which explored how a lack of transparency in the pharmaceutical industry and the European Union harmed public health outcomes during the Covid-19 pandemic.

Through legal and investigative research, the series uncovered the lack of transparency and set out recommended legal and policy options to ensure those whose responsibility it was to protect the public interest in general, and public health more specifically, are actually in charge of the process. Moreover, it called for decision-makers to be held accountable.

One year on, it appears, sadly, that little has changed.

On the transparency front, the vaccine contracts have still not been made public – despite having been honoured with public money – [unlike in South Africa for example](#), where the High Court ordered the health department to provide copies of all its COVID-19 vaccine procurement contracts, negotiations and other agreements to a non-governmental organisation in the name of transparency. The fight is ongoing: [a group of five Green MEPs](#) have taken the matter to the European Court of Justice, with a ruling expected this year. In parallel, the European Public Prosecutor's Office (EPPO) confirmed in October 2022 that it had an [ongoing investigation into the acquisition of COVID-19 vaccines in the European Union](#). The lack of information since the official announcement is regrettable.

Secondly and to this day, the European Commission is failing to provide copies of the text messages exchanged between the President of the Commission, Ursula von der Leyen, and Pfizer CEO Albert Bourla, when negotiating the third contract. Despite the [common framework on how to deal with text messages](#) within EU institutions proposed in June 2023, the Commission continues to insist that text messages should generally not be used in a professional context, and thus only be registered in "exceptional" cases. This is, once again, despite the EU Ombudsman's opinion that text messages fall within the scope of EU law on public access to documents ([Reg. 1049/2001](#)), and subsequent recommendation that text messages should therefore be registered.

On the negotiation of advance purchase agreements between the EU and industry, the consequences of the decisions made during the COVID-19 pandemic are still being felt today. The terms of these contracts – particularly the largest one for 1,8 billion doses signed with Pfizer, and negotiated by text message – were particularly unfavourable to the European Commission and to the Member States it represented, forcing them to buy doses which were no longer needed. In November 2023, Pfizer [announced it was launching a lawsuit](#) against Poland and Hungary. There is, however, a small glimmer of hope on the

horizon: this month, DG HERA [announced](#) that a joint procurement procedure for COVID-19 mRNA vaccines had been launched. Signatures are expected in the Spring, and do not, this time, contain any purchase obligations. Whether it makes sense to buy more COVID-19 vaccines now, as in [May 2023 the EC found itself having to renegotiate its Pfizer contract](#) to delay the delivery of already purchased vaccines until 2026, remains to be seen.

Unfortunately, there has been little progress on transparency in the manner in which DG HERA operates, with contracts, most meeting minutes, and other documents still unavailable to public scrutiny. The [ongoing evaluation](#) of HERA is, however, an opportunity to address these concerns.

Regarding access to medicines and health products both within the Union and globally, much remains to be done. It's worth remembering that because of the clauses contained in the advance purchase agreements, [EU countries destroyed 4 billion € worth of vaccines](#) - vaccines which could have saved countless lives in developing countries. Whilst we do welcome the EP's "Special Committee on the COVID-19 pandemic: lessons learned and recommendations for the future" decision to vote to support a series of pro-access conditions to improve EU preparedness for future pandemics and health emergencies, including "recommends attaching better conditions to public funding for the future, regarding transparency standards on the use of public funds, know-how transfers and affordability", this report is unfortunately non-binding, and stricter commitments are necessary if access is to be significantly improved. Considering the rigid EU's stance on the equity-related provisions of the ongoing Pandemic Treaty's negotiations - best illustrated by its attempt to water-down the binding language of the text - coupled with its reluctance to remove the export prohibition from the Union compulsory licence proposal, this seems unlikely.

Furthermore, although access is explicitly mentioned as one of the new pharmaceutical package's aims, and proposals are on the table to reduce regulatory protection periods, any incentives provided to industry must be tied to strong transparency of R&D conditionalities. Furthermore, it must be recognised that the impact of this legislative change will be felt farther afield than the EU, meaning a global dimension to the legislation is unfortunately missing.

This approach to the management of future health threats is worryingly short-sighted, and distances the EU from its values and commitments to a multilateralism based on fair and healthy partnerships with developing nations. COVID-19 showed us that pandemics know no borders.

In summary, it appears that the "lessons learnt" perhaps haven't been.

Contact

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