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Judgment of the General Court in Case T-36/23 | Stevi and The New York Times v Commission

Access to documents: the Commission decision refusing a journalist of *The New York Times* access to the text messages exchanged between President von der Leyen and the CEO of Pfizer is annulled

By an application based on the Access to Documents Regulation, ¹ Matina Stevi, a journalist working for the daily newspaper *The New York Times*, requested the European Commission to provide access to all text messages exchanged between President Ursula von der Leyen and Albert Bourla, the chief executive officer of Pfizer, between 1 January 2021 and 11 May 2022. The Commission rejected that application on the ground that it did not hold the documents covered by it. Ms Stevi and *The New York Times* requested the General Court of the European Union to annul the Commission's decision.

In its judgment, **the General Court upholds the action and annuls the Commission's decision.**

The Court recalls that the purpose of the Access to Documents Regulation is to give the fullest possible effect to the right of public access to documents held by the institutions. Thus, in principle, all documents of the institutions should be accessible to the public. However, where an institution states that a document does not exist in the context of an application for access, the non-existence of that document is presumed, in accordance with the presumption of veracity attaching to that statement. That presumption may, however, be rebutted on the basis of relevant and consistent evidence produced by the applicant.

In the present case, the Court notes that the Commission's replies regarding the text messages requested throughout the procedure are based either on assumptions or on changing or imprecise information. By contrast, Ms Stevi and *The New York Times* have produced relevant and consistent evidence describing the existence of exchanges, in the form of text messages in particular, between the President of the Commission and the CEO of Pfizer in the context of the procurement of vaccines by the Commission from that company during the COVID-19 pandemic. They have thus **succeeded in rebutting the presumption of non-existence and of non-possession of the requested documents.**

In such a situation, the Commission cannot merely state that it does not hold the requested documents but must provide credible explanations enabling the public and the Court to understand why those documents cannot be found. The Commission has not explained in detail the type of searches that it carried out to find those documents or the identity of the places where those searches took place. Accordingly, **it has not given a plausible explanation to justify the non-possession of the requested documents.** Moreover, the Commission has not sufficiently clarified whether the requested text messages were deleted and, if so, whether the deletion was done deliberately or automatically or whether the President's mobile phone had been replaced in the meantime.

Last, the Commission has also failed to explain in a plausible manner why it considered that the text messages exchanged in the context of the procurement of COVID-19 vaccines did not contain important information or information involving follow-up the retention of which must be ensured.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months and ten days of notification of the decision.

Unofficial document for media use, not binding on the General Court.

The [full text and, as the case may be, an abstract](#) of the judgment is published on the CURIA website on the day of delivery.

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Images of the delivery of the judgment are available on '[Europe by Satellite](#)' ☎ (+32) 2 2964106.

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¹ [Regulation \(EC\) No 1049/2001](#) of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.