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## Pfizer sues Poland over unclaimed covid vaccines

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US pharmaceutical giant Pfizer is going to court in an effort to force Poland to receive and pay for 60 million doses of coronavirus vaccine that the country agreed to buy under the terms of a contract negotiated by the European Commission.

The contract, first signed in April 2021 with the support of member states, committed EU nations to buy 650 million doses in 2022 and 450 million in 2023 from Pfizer's subsidiary BioNTech. But after the winter covid surge of 2021-22 subsided, demand fell abruptly.

Governments in eastern and central Europe, where vaccine uptake was already low, began to complain that they were oversupplied and would have to buy millions of vaccines only to destroy them when they expired.

In April 2022, Poland said it had stopped taking deliveries, citing a force majeure clause in the contract. Russia's invasion of Ukraine, which drove millions of refugees to Poland, had drained its public finances, the government said.

By summer 2022 a coalition of 10 nations were asking for the deal to be renegotiated. Poland was joined by Bulgaria, Croatia, Estonia, Hungary, Latvia, Lithuania, Romania, Slovakia, and Slovenia. The European Commission announced a renegotiated deal with Pfizer this May, to which nine of those nations signed on. It allowed countries to pay a fee to change some of their ordered doses into "optional orders," which would only be completed if the pandemic resurged. In effect, countries would pay more per dose but receive fewer overall doses and hence a lower final bill.

The new, lower number of doses to be delivered was not made public, however, nor was the amount of the fee. A lack of transparency has surrounded the contract, worth roughly €21.1bn, since commission president Ursula von der Leyen revealed in April 2021 that formal negotiations had been preceded by text conversations between her and Pfizer chief executive Albert Bourla.

Journalists soon filed freedom of information requests to see the texts, but the commission failed to provide them, earning a rebuke from European Ombudsman Emily O'Reilly. The European Parliament's covid-19 committee was also thwarted in its efforts to question both Bourla and Von der Leyen.

Such secrecy has also been a hallmark of contracts drawn up between national governments and vaccine makers. Of the few contracts that have been seen, some contain punitive clauses to discourage governments from revealing their terms.<sup>1</sup>

### Cancellation fee

Poland refused to sign the renegotiated deal this May. Then health minister Adam Niedzielski branded it "absolutely insufficient and unsatisfactory" and appeared to reveal a key element. Pfizer "demands payment for those preparations that will not be delivered," he said, "and this fee is more or less half of the full price."

Months of bilateral negotiations between Poland and Pfizer since then have failed to yield agreement, although Poland did obtain a reduction of its much smaller Moderna vaccine order, from roughly seven to three million doses.

Pfizer's suit will be heard in a Belgian court since the contract was signed under Belgian law. The first submissions will be heard on 6 December.

The lawsuit's timing is awkward for Poland's incoming Civic Coalition government, expected to be led by Donald Tusk. The outgoing Law and Justice party government, which has ruled the country since 2015, had maintained a PLN5bn (£1bn; €1.15bn; \$1.2bn) contingency fund to pay for future costs related to the pandemic, roughly the price of 60 million doses in 2021. But this money was committed to fund expanded welfare programmes just before last month's election, in what opposition parties called an effort to buy votes.

Pfizer, which declined to comment on the case to several Polish newspapers last week, said in a statement given to *The BMJ* that "these formal proceedings follow a prolonged contractual breach, and lengthy discussions."

The statement continued, "Poland placed a binding order and purchased all the doses that are in dispute and agreed to a specific delivery schedule in respect of those doses. Poland has, however, refused to take delivery of those doses. Pfizer and BioNTech believe it is important that all parties respect their contractual obligations under the agreement that has facilitated and underpinned the successful European pandemic response."

<sup>1</sup> Dyer O. Covid-19: Drug companies charged South Africa high prices for vaccines, contracts reveal. *BMJ* 2023;382. doi: 10.1136/bmj.p2112 pmid: 37714530