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The EU has published a redacted version of its contract with UK drug maker AstraZeneca to procure the Covid-19 vaccine. Some initial thoughts from us.

Firstly – this is subject to Belgian law; what follows is our view as English lawyers. English law and Belgian law are different.

Secondly, a note on definitions.

'Best reasonable efforts' is often a drafting compromise. One party wants best efforts; another wants reasonable efforts. A compromise could be 'best reasonable efforts' – or 'reasonable best efforts'. None of these amount to an outright obligation.

However, here, "Best Reasonable Efforts" is a defined term. The meaning of the phrase is found not in the phrase on its own but in the definition. That definition does not actually talk about "best reasonable efforts". Best Reasonable Efforts is defined to mean the activity and effort that a company like AstraZeneca would use. This is quite different to the wording in Curevac/EU vaccine contract – there the definition of reasonable best efforts starts "a reasonable degree of best effort to accomplish a given task". The definition in the AstraZeneca contract does not import these concepts. (And it is certainly not an outright obligation to do something).

"Initial Europe Doses" is the first tranche of 300m doses for member states. Some of the details about delivery timelines have been redacted.

Thirdly, the operative clauses.

Clause 5.1 says that AstraZeneca shall use "Best Reasonable Efforts" to manufacture the "Initial Europe Doses" within the EU to distribution hubs within a redacted timeline. Here, the reference is just to manufacture in the EU.

Clause 5.4 says that AstraZeneca has to use "Best Reasonable Efforts" to manufacture the Vaccine within the EU and the UK; that clause itself doesn't oblige AstraZeneca to supply any given amount.

A literal reading is that (5.4) AstraZeneca has to use the degree of effort that a company like AstraZeneca would use to manufacture in both the EU and the UK; and (5.1) has to use the same level of effort to manufacture the Initial Europe Doses within the EU. The contract doesn't say explicitly that AstraZeneca has to use efforts to manufacture the Initial Europe Doses in the UK.

But, it can be argued that a company the size of AstraZeneca with production facilities across the world should be using its efforts to plug significant shortfalls in Europe in a reasonable way.

Some commentators have pointed out that clause 6.2 deals with capacity limitations, but this clause is irrelevant to the UK/EU issue. 6.2 only deals with a conflict between separate agreements entered into by the commission.

The EU has said that clause 13.1(e) is important. In this, AstraZeneca says that it is not under an obligation to anyone else (like the UK) "in respect of the Initial Europe Doses" or that conflicts with the agreement. We expect that AstraZeneca will say that this was true when

the contract was signed, and that it has since made Best Reasonable Efforts; but vaccine manufacture is not guaranteed in the timescales available.

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