Twitter Thread by Peter

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Thread: The EU and AstraZeneca have agreed to publish the APA contract. Whilst the EU pushed for this they appear to have shot themselves in the foot.

Clause 5.1 "AstraZeneca shall use its Best Reasonable Efforts to manufacture the Initial Doses within the EU for distribution...."

There are two features of this clause:

The first is It only requires Reasonable Best Efforts to manufacture. There is no guarantee of production.

The second is it only provides for access to vaccine manufactured within the EU. @vonderleyen's demand that @AstraZeneca should divert 75 million doses from the UK has no contractual basis.

The delivery schedule is literally named the "Estimated Delivery Schedule. There is no guarantee offered that it can be met. In fact it states it is for "earliest possible" delivery.

Estimated Delivery Schedule

*Number of Doses in Millions**	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Monthly Delivery	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Cumulative Total	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

*Shows the reserved manufacturing and production schedule to support earliest possible delivery of Doses to the Participating Member States. Final delivery subject to agreement of delivery schedule and regulatory approval. Payments for shipments of Doses shall be due and payable within [redacted] following invoicing for such Doses in accordance with Section 7.5 of the Agreement.

The @vonderleyen threats to sue @AstraZeneca are nothing more than bluster aimed at diverting attention away from the three month delay she and Merkel caused.
https://t.co/4czr7j3sRE

The EU need to calm the aggression, apologise to AstraZeneca. And allow them to continue to make reasonable best efforts for the earliest possible delivery of vaccine.

"AstraZeneca shall use its Best Reasonable Efforts to manufacture the Vaccine at manufacturing sites within the EU (which, for the purpose of this Section 5.4 only shall include the United Kingdom)" This would allow AstraZeneca to use production capacity in the UK.

5.4. Manufacturing Sites. AstraZeneca shall use its Best Reasonable Efforts to manufacture the Vaccine at manufacturing sites located within the EU (which, for the purpose of this Section 5.4 only shall include the United Kingdom) and may manufacture the Vaccine in non-EU facilities, if appropriate, to accelerate supply of the

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SENSITIVE*
RELEASABLE TO: Need to know basis

Vaccine in Europe; *provided*, that AstraZeneca shall provide prior written notice of such non-EU manufacturing facilities to the Commission which shall include an explanation for such determination to use non-EU manufacturing facilities. If AstraZeneca is unable to deliver on its intention to manufacture the Initial Europe Doses and/or Optional Doses under this Agreement in the EU, the Commission or the Participating Member States may present to AstraZeneca, CMOs within the EU capable of manufacturing the Vaccine Doses, and AstraZeneca shall use its Best Reasonable Efforts to contract with such proposed CMOs to increase the available manufacturing capacity within the EU. The manufacturing site planning is set out in Schedule A.

But it does not allow for doses contracted to the UK to be diverted.

This ability to include the UK does not apply to clause 5.1 the supply of the Initial Doses which are of course the ones that will be later than the estimated schedule. I'm not sure if this is a drafting error but clause 5.4 only applies to 5.4. Perhaps it was meant apply to 5.

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On reading again I get what they're trying to say. Including the UK only applies to manufacturing sites, it is not included in any other reference to the EU. Poor drafting IMO. So AZ could make best reasonable efforts to manufacture doses for the EU in the UK, even Initial Doses

This wouldn't oblige them to breach any existing contracts. I don't believe 13.1 e applies to the UK contract as this pre-existing contract does not impede the fulfilment of the order. In fact it has helped as AZ have ironed out production difficulties over many months in the UK.

(e) it is not under any obligation, contractual or otherwise, to any Person or third party in respect of the Initial Europe Doses or that conflicts with or is inconsistent in any material respect with the terms of this Agreement or that would impede the complete fulfillment of its obligations under this Agreement;