



Press and Information

Court of Justice of the European Union

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Judgment in Case C-204/09

Flachglas Torgau GmbH v Germany

Public access to environmental information may be refused by a ministry to the extent that the information relates to a legislative process in which the ministry is participating

However, that exception no longer applies if the legislative process has ended

Directive 2003/4¹, which implements the Aarhus Convention² in EU law, is intended to guarantee a right of access by citizens and businesses to environmental information held by public authorities without their having to state an interest. However, the Directive gives Member States the option to exclude that right in respect of 'bodies or institutions acting in a ... legislative capacity'. Moreover, the Directive allows Member States to make provision that a request for environmental information may be refused in certain cases, in particular where disclosure of that information would adversely affect the confidentiality of the proceedings of public authorities, so long as the confidentiality is provided for by law. The Directive was transposed into German law by the Law on environmental information (Umweltsinformatiengesetz).

In the present case, Flachglas Torgau GmbH is a German glass manufacturer participating in greenhouse gas emissions trading. It seeks information about the conditions under which the Umweltbundesamt (Federal Office for the Environment) – the authority responsible for that trading in Germany – adopted allocation decisions for emissions licences during 2005 to 2007. To that end, Flachglas Torgau asked the Bundesministerium für Umwelt, Naturschutz und Reaktorsicherheit (Federal Ministry for the Environment, Protection of Nature and Reactor Safety) to provide it with information relating to the legislative process in which the Law on the national allocation plan for greenhouse gas emission licences in the allocation period 2005-2007 was adopted and the implementation of that law. In particular, the manufacturer requested access to internal memoranda and comments produced by the Ministry and correspondence, including electronic mail, between it and the Federal Office for the Environment.

The ministry concerned refused that request. It considered, first, that it was exempt from the duty to provide information relating to the legislative process because it participated in that process, and, secondly, that the information relating to the implementation of the 2007 law was covered by the confidentiality of the proceedings of public authorities. The Bundesverwaltungsgericht (Federal Administrative Court, Germany), which must decide the case at final instance, asked the Court of Justice to clarify, in that context, what restrictions Member States may put on the public's right of access to environmental information.

According to the Court, Member States may provide for ministries to refuse public access to environmental information to the extent that they participate in the legislative process, in particular by tabling draft laws or giving opinions. In such a case, Member States may make use of the option to exclude that right of access in respect of 'bodies and institutions acting in a ... legislative capacity'. The purpose of that option is to allow Member States to lay down appropriate rules to ensure that the process for the adoption of legislation runs smoothly, taking into account the fact

¹ Directive 2003/4/EC of the European Parliament and the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

² Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

that, in the various Member States, the provision of information to citizens is, usually, adequately ensured in the legislative process.

However, once the legislative process has come to an end (by the promulgation of the law), the ministry which participated in that process can no longer rely on that exception because the smooth running of that process can no longer, in principle, be impeded by making environmental information available. Furthermore, the documents relating to that process, and, in particular, parliamentary reports are, generally, available to the public.

However, it cannot be ruled out that the ministry may refuse to provide information on other grounds recognised by European Union law.

Therefore, Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect the confidentiality of the proceedings of public authorities, in so far as the confidentiality is 'provided for by law'. In that regard, the Court notes that the European Union legislature clearly wanted an express provision to exist in national law. While it is not necessary for all the conditions for application of that ground of refusal to be determined in detail, public authorities cannot be allowed to determine unilaterally the circumstances in which confidentiality can be invoked. That means in particular that national law must clearly establish the scope of the concept of 'proceedings' of public authorities, which refers to the final stages of the decision-making process of public authorities.

The Court concludes that the condition laid down by the directive that the confidentiality of the proceedings of public authorities must be 'provided for by law' can be regarded as fulfilled by the existence, in the national law of the Member State concerned, of a rule which provides, generally, that the confidentiality of the proceedings of public authorities is a ground for refusing access to environmental information held by those authorities, in so far as national law clearly defines the concept of proceedings.

In addition, the Court recalls that a public authority wishing to rely on the confidentiality of its proceedings in order to refuse a request for access to environmental information must balance the interests involved in each particular case.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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