

JUDGMENT OF THE COURT (Fifth Chamber)

12 June 2003 *

In Case C-316/01,

REFERENCE to the Court under Article 234 EC by the Unabhängiger Verwaltungssenat Wien (Austria) for a preliminary ruling in the proceedings pending before that court between

Eva Glawischnig

and

Bundesminister für soziale Sicherheit und Generationen,

on the interpretation of Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56),

* Language of the case: German.

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, P. Jann and A. Rosas, Judges,

Advocate General: A. Tizzano,

Registrar: M.-F. Contet, Principal Administrator,

after considering the written observations submitted on behalf of:

- Ms Glawischnig, by M. Meyer, Prozessbevollmächtigte,
- the Austrian Government, by C. Pesendorfer, acting as Agent,
- the Commission of the European Communities, by G. zur Hausen and I. Martínez del Peral, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Ms Glawischnig, represented by M. Meyer; the Austrian Government, represented by G. Hesse, acting as Agent; and the Commission, represented by G. zur Hausen, at the hearing on 19 September 2002,

after hearing the Opinion of the Advocate General at the sitting on 5 December 2002,

gives the following

Judgment

- 1 By decision of 25 July 2001, received at the Court on 13 August 2001, the Unabhängiger Verwaltungssenat Wien (Independent Administrative Chamber, Vienna) referred to the Court for a preliminary ruling under Article 234 EC three questions on the interpretation of Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56).

- 2 Those questions were raised in proceedings between Ms Glawischnig and the Bundesminister für soziale Sicherheit und Generationen (Federal Minister for Social Security and Generations) concerning a request for information relating to administrative measures for checking products manufactured from genetically modified soya and maize.

Legal context

Community law

- 3 Directive 90/313 is intended, as stated in the sixth recital in its preamble, to guarantee to any natural or legal person throughout the Community free access to available information in written, visual, aural or database form held by public

authorities, concerning the state of the environment, activities or measures adversely affecting or likely so to affect the environment, and those designed to protect it.

4 Article 2(a) of Directive 90/313 provides:

‘For the purposes of this directive:

- (a) “information relating to the environment” shall mean any available information in written, visual, aural or database form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely so to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes’.
- 5 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Directive 90/313 (OJ 2003 L 41, p. 26) contains a definition of environmental information which is wider and more detailed than that in Directive 90/313. However, as Directive 2003/4 replaces Directive 90/313 with effect only from 14 February 2005, the latter directive is the one which applies to the main proceedings in this case.
- 6 Council Regulation (EC) No 1139/98 of 26 May 1998 concerning the compulsory indication [in] the labelling of certain foodstuffs produced from

genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC (OJ 1998 L 159, p. 4), as amended by Commission Regulation (EC) No 49/2000 of 10 January 2000 (OJ 2000 L 6, p. 13) ('Regulation No 1139/98'), specifies the wording which must obligatorily appear in the labelling of foods and food ingredients produced from soya beans covered by Commission Decision 96/281/EC of 3 April 1996 concerning the placing on the market of genetically modified soya beans (*Glycine max* L.) with increased tolerance to the herbicide glyphosate, pursuant to Council Directive 90/220/EEC (OJ 1996 L 107, p. 10), and from maize covered by Commission Decision 97/98/EC of 23 January 1997 concerning the placing on the market of genetically modified maize (*Zea mays* L.) with the combined modification for insecticidal properties conferred by the Bt-endotoxin gene and increased tolerance to the herbicide glufosinate ammonium pursuant to Council Directive 90/220/EEC (OJ 1997 L 31, p. 69).

National law

- 7 Directive 90/313 was transposed into Austrian law by the Umweltinformationsgesetz (Law on information on the environment, BGBl. I 1993/495, in the version of BGBl. I 1999/137, 'the UIG').
- 8 Paragraph 2 of the UIG provides:

'Environmental data shall mean information recorded on data media relating to:

1. the state of water, air, soil, fauna, flora and land and natural sites, and any changes to that state, or noise pollution;

2. plans or activities which cause or may cause danger to humans, or which harm or may harm the environment, in particular as a result of emissions, introduction or release into the environment of chemicals, waste, dangerous organisms or energy, including ionising rays, or as a result of noise;
3. properties, amounts and effects harmful to the environment of chemicals, waste, dangerous organisms, released energy, including ionising rays, or noise;
4. existing or planned measures to preserve, protect and improve the quality of water, air, soil, fauna, flora and land and natural sites, to reduce noise pollution, and measures to avert damage and to compensate for damage that has occurred, including in particular in the form of administrative acts and programmes.'

The main proceedings and the questions referred for a preliminary ruling

- 9 On 13 January 2000 Ms Glawischnig, a member of the Nationalrat (Austrian Federal Parliament) asked the then responsible Federal Minister for certain information relating to administrative measures monitoring products manufactured from genetically modified soya and maize. That request was based both on the UIG and on the Auskunftspflichtgesetz (Law on the duty to provide information, BGBl. I 1997/287, 'the APG').

10 Her questions were as follows:

‘Pursuant to the [APG] and the [UIG], I request the following information for the period 1 August to 31 December 1999:

1. How many products made from genetically modified soya and genetically modified maize were examined during the abovementioned period to check that they were correctly labelled under EC Regulation 1139/98?

2. How often were complaints raised?

3. Which products were involved? Please give the product names and the producers.

4. How often was an administrative penalty imposed? Which producers were penalised in respect of which products?

5. How high were the highest and lowest penalties for defective labelling (a) from 1 August to 31 December 1999 and (b) before then?’

- 11 The Federal Chancellor, who was responsible for implementation of Regulation No 1139/98, answered Questions 1 and 2 but, by decision of 10 February 2000, refused to answer Questions 3 to 5, on the ground that the information requested was not environmental data within the meaning of Paragraph 2 of the UIG.
- 12 Ms Glawischnig appealed against that decision to the Unabhängiger Verwaltungssenat Wien, arguing that the placing on the market of foodstuffs containing genetically modified organisms (GMOs) or derived from such organisms falls within the definition of ‘activities which cause or may cause danger to humans, or which harm or may harm the environment’ in Paragraph 2(2) of the UIG. She considers that consumption of such foodstuffs may have repercussions on health and the environment.
- 13 The Unabhängiger Verwaltungssenat Wien is of the view that the information asked for by Ms Glawischnig is neither ‘environmental data’ within the meaning of Paragraph 2 of the UIG nor ‘information relating to the environment’ within the meaning of Article 2(a) of Directive 90/313. However, in view of the wide interpretation the Court gave the latter provision in Case C-321/96 *Mecklenburg*

[1998] ECR I-3809, it decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

- ‘1. Can the name of the manufacturer and the product description of foodstuffs in respect of which a complaint has been made in the context of an administrative check on the ground of defective labelling, pursuant to Council Regulation (EC) No 1139/98 of 26 May 1998 concerning the compulsory indication [in] the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC, be regarded as “information relating to the environment” within the meaning of Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment?

2. Are administrative documents from which it is apparent how often administrative penalties have been imposed for infringements of Regulation (EC) No 1139/98 “information relating to the environment” within the meaning of Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment?

3. Are administrative documents from which it is apparent which manufacturers and which products are concerned by administrative penalties for breach of Regulation (EC) No 1139/98 “information relating to the environment” within the meaning of Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment?’

¹⁴ By letter of 21 September 2001, the national court informed the Court that it is now the Bundesminister für soziale Sicherheit und Generationen who is responsible for implementation of Regulation No 1139/98 in Austria.

The questions referred for a preliminary ruling

- 15 By its three questions, which concern the interpretation of the same provision of Community law and may therefore be taken together, the national court seeks essentially to know whether Article 2(a) of Directive 90/313 is to be interpreted as meaning that the name of the manufacturer and the product description of foodstuffs which have been the subject of administrative measures for controlling compliance with Regulation No 1139/98, the number of administrative penalties imposed following those measures, and the producers and products concerned by such penalties constitute information relating to the environment within the meaning of that provision.
- 16 Article 2(a) of Directive 90/313 classifies information relating to the environment within the meaning of that directive in three categories: information on the state of water, air, soil, fauna, flora, land and natural sites ('the first category'), information on activities or measures affecting or likely to affect those environmental factors ('the second category'), and information on activities or measures designed to protect those factors ('the third category').

Observations submitted to the Court

- 17 Ms Glawischnig submits that the placing on the market of foodstuffs falls within the second category of information where it adversely affects or is likely to affect the environment. That category includes *inter alia* data relating to products

which, as in the case of products consisting of or containing GMOs, must be the subject of an authorisation procedure or special labelling with a view to protection of the environment. In view of the fact that the objective of such a procedure is to assess the risks to human health and the environment and that humans must be regarded as forming part of the environment for the purposes of Directive 90/313, incorrect labelling of products containing GMOs constitutes information relating to the environment.

- 18 Ms Glawischnig further submits that administrative penalties for breaches of the labelling obligation constitute, albeit indirectly, measures to protect the environment. Information relating to such penalties consequently also falls within the third category.
- 19 The Austrian Government contends that the information at issue in the main proceedings is not covered by Article 2(a) of Directive 90/313. It submits that the concept of the environment in that provision is limited to the environmental factors expressly listed there. Human health is included only indirectly, in so far as it is affected by the negative effects of an activity concerning one of those environmental factors. While the expression 'information relating to the environment' should be interpreted widely, such an interpretation cannot amend the clearly defined list of environmental factors concerned, but can concern only the extent of information relating to those factors.
- 20 The request for information at issue in the main proceedings concerns information relating to administrative measures for checking certain products as to whether their labelling complies with the requirements laid down by Regulation No 1139/98. Such information does not concern the state of one of the environmental factors mentioned in Article 2(a) of Directive 90/313.

- 21 The Commission also considers that the information at issue in the main proceedings does not fall within the scope of Directive 90/313. It submits that data on compliance with a labelling obligation does not itself provide any information on the present state of an environmental factor listed there, and that information which does not relate specifically to the state of one of those factors does not come within the first category.
- 22 As to the second category, the Commission submits that administrative measures intended to check compliance with Regulation No 1139/98 are not activities affecting or likely to affect the state of the environment. Even if it cannot be excluded at the outset that the placing on the market of products covered by that regulation may as such be regarded as potential harm to the environment, it points out that the information at issue in the main proceedings does not refer to the placing of those products on the market but to compliance with certain labelling rules on that occasion.
- 23 As to the third category, the Commission submits that information concerning the results and consequences of administrative checks on compliance with Regulation No 1139/98 could constitute information relating to the environment within the meaning of Directive 90/313 only if that regulation were intended to protect the environment. That is not the case, however, since its aim is not to protect the environment but principally to provide consumers with information.

Findings of the Court

- 24 The Community legislature's intention was to make the concept of 'information relating to the environment' defined in Article 2(a) of Directive 90/313 a broad

one, and it avoided giving that concept a definition which could have had the effect of excluding from the scope of that directive any of the activities engaged in by the public authorities (see *Mecklenburg*, paragraphs 19 and 20).

- 25 Directive 90/313 is not intended, however, to give a general and unlimited right of access to all information held by public authorities which has a connection, however minimal, with one of the environmental factors mentioned in Article 2(a). To be covered by the right of access it establishes, such information must fall within one or more of the three categories set out in that provision.
- 26 In the present case, it is common ground that the information at issue in the main proceedings does not come under the first category.
- 27 As to the second category, information on measures of control does not generally fall within that category, even if those controls concern activities or measures which for their part affect or are likely to affect one or more of the environmental factors.
- 28 Consequently, in the present case, even if information relating to the activity of marketing foodstuffs containing GMOs falls within the second category, that does not suffice to bring within that category information relating to measures of control of that marketing.

29 Information concerning controls may, however, come under the third category, where the controls are intended to protect one or more of the environmental factors.

30 In this respect, the measures of control at issue in the main proceedings relate to compliance with Regulation No 1139/98. As the Advocate General observes in point 32 of his Opinion, that regulation has a dual purpose: first, to remove potential obstacles to the free movement of products containing genetically modified soya and maize, and, second, to provide the final consumer with information.

31 Thus the fourth recital in the preamble to Regulation No 1139/98 states that differences between the measures taken by certain Member States in respect of the labelling of foods and food ingredients produced from genetically modified products are liable to impede the free movement of those foods and food ingredients and thereby adversely affect the functioning of the internal market, so that it is necessary to adopt uniform Community labelling rules for those products. It follows from the sixth recital in the preamble that those labelling rules are intended to provide the final consumer with information.

32 Under Article 2(3) of Regulation No 1139/98, those labelling rules consist essentially in adding the words 'produced from genetically modified soya' or 'produced from genetically modified maize' as the case may be.

- 33 Regulation No 1139/98 is thus intended to add further information to that which must already be mentioned on the labelling of certain foodstuffs under Council Directive 79/112/EEC of 18 December 1978 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer (OJ 1979 L 33, p. 1), which was not designed as a measure for protection of the environment.
- 34 Consequently, the information at issue in the main proceedings does not come under the third category either.
- 35 The answer to the questions referred for a preliminary ruling must therefore be that Article 2(a) of Directive 90/313 is to be interpreted as meaning that the name of the manufacturer and the product description of foodstuffs which have been the subject of administrative measures for controlling compliance with Regulation No 1139/98, the number of administrative penalties imposed following those measures, and the producers and products concerned by such penalties do not constitute information relating to the environment within the meaning of that provision.

Costs

- 36 The costs incurred by the Austrian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the Unabhängiger Verwaltungssenat Wien by decision of 25 July 2001, hereby rules:

Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment is to be interpreted as meaning that the name of the manufacturer and the product description of foodstuffs which have been the subject of administrative measures for controlling compliance with Council Regulation (EC) No 1139/98 of 26 May 1998 concerning the compulsory indication [in] the labelling of certain foodstuffs produced from genetically modified organisms of particulars other than those provided for in Directive 79/112/EEC, as amended by Commission Regulation (EC) No 49/2000 of 10 January 2000, the number of administrative penalties imposed following those measures, and the producers and products concerned by such penalties do not constitute information relating to the environment within the meaning of that provision.

Wathelet

Edward

La Pergola

Jann

Rosas

Delivered in open court in Luxembourg on 12 June 2003.

R. Grass

M. Wathelet

Registrar

President of the Fifth Chamber