



Fact sheet

PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION

Since the beginning of the 1990s, and particularly since the adoption of the Convention on access to information, public participation in decision-making and access to justice in environmental matters ('the Aarhus Convention') on 25 June 1998,¹ the European Union has established a body of rules enshrining the principle that the public has a right of access to environmental information held by the competent authorities of the Member States (Council Directive 90/313/EEC of 7 June 1990,² Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003)³ or by the EU institutions themselves (Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006).⁴ That legislation added to the relevant provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to documents of the EU institutions,⁵ and to the relevant provisions regarding access to information on sector-specific EU legislation adopted in relation to environmental protection. The Court of Justice of the European Union has since developed a considerable body of case-law in various judicial proceedings.

1 The Aarhus Convention was drawn up by the United Nations Economic Commission for Europe (UNECE). It was adopted by its Member States on 25 June 1998 at the Fourth Ministerial Conference as part of the 'Environment for Europe' process. It entered into force on 30 October 2001.

2 Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ L 158, 23.6.1990, p. 56).

3 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ L 41, 14.2.2003, p. 26).

4 Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13).

5 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

I. The Aarhus Convention and EU law

*Judgment of 19 December 2013 (Grand Chamber), Fish Legal and Shirley (C-279/12, EU:C:2013:853)*⁶

Fish Legal, the legal arm of the English anglers' federation (Angling Trust) has as its object to combat, by all legal means, pollution and other damage to the aquatic environment and to protect angling and anglers. Fish Legal asked two water companies, United Utilities Water plc and Yorkshire Water Services Ltd, for information concerning discharges, clean-up operations and emergency overflow. Mrs Shirley wrote to another water company, Southern Water Services Ltd, in order to ask for information relating to sewerage capacity for a planning proposal in her village in the county of Kent.

Since neither Fish Legal nor Mrs Shirley received the requested information from those companies within the periods prescribed by the Environmental Information Regulations 2004 ('the EIR 2004'), which are designed to transpose Directive 2003/4/EC into national law, they both complained to the Information Commissioner. The Information Commissioner held that the water companies concerned were not public authorities for the purposes of the EIR 2004 and that he could not adjudicate on their complaints.

After the First-tier Tribunal dismissed their appeals against those decisions, the Upper Tribunal (United Kingdom) made a request for a preliminary ruling to the Court of Justice of the European Union concerning the interpretation of Article 2(2) of Directive 2003/4/EC, as regards the definition of 'public authority', particularly in the light of the Aarhus Convention Implementation Guide published by the UNECE, and seeking inter alia to ascertain the criteria for determining whether entities such as the water companies concerned, which undisputedly provide public services relating to the environment, are under the control of a body or person falling within Article 2(2)(a) or (b) of Directive 2003/4/EC, and should therefore be classified as 'public authorities' by virtue of Article 2(2)(c) of that directive. The referring tribunal also asked whether Article 2(2)(b) and (c) of Directive 2003/4/EC must be interpreted as meaning that, where a person falls within that provision in respect of some of its functions, responsibilities or services, that person constitutes a public authority only in respect of the environmental information which it holds in the context of those functions, responsibilities and services.

According to the Court, for the purpose of interpreting Directive 2003/4/EC, account must be taken of the wording and aim of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which that directive is designed to implement in European Union law.

By becoming a party to the Aarhus Convention,⁷ the European Union undertook to ensure, within the scope of European Union law, a general principle of access to environmental information held by or for public authorities.

⁶ This judgment was presented in the 2013 Annual Report, p. 46.

⁷ Council Decision 2005/370/EC of 17 February 2005 on the conclusion on behalf of the European Community of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ L 124, 17.5.2005, p. 1).

As recital 5 in the preamble to Directive 2003/4/EC confirms, in adopting that directive the European Union legislature intended to ensure the consistency of European Union law with the Aarhus Convention with a view to its conclusion by the Community, by providing for a general scheme to ensure that any natural or legal person in a Member State has a right of access to environmental information held by or on behalf of public authorities, without that person having to state an interest (paragraphs 35-37).

While the Aarhus Convention Implementation Guide may be regarded as an explanatory document, capable of being taken into consideration if appropriate among other relevant material for the purpose of interpreting the Convention, the observations in the Guide have no binding force and do not have the normative effect of the provisions of the Aarhus Convention (paragraph 38).

(As regards the question concerning the interpretation of the concept of public authority, see section III below, entitled 'Concept of "public authority" required to grant access to environmental information').

II. Concept of 'information relating to the environment'

Judgment of 17 June 1998, Mecklenburg (C-321/96, EU:C:1998:300)

Relying on Directive 90/313/EEC, Mr Mecklenburg requested the town of Pinneberg and Kreis Pinneberg — Der Landrat ('Kreis Pinneberg') to send him a copy of the statement of views submitted by the competent countryside protection authority in connection with planning approval for the construction of the 'western bypass'. Kreis Pinneberg rejected his request on the ground that the authority's statement of views was not 'information relating to the environment' within the meaning of Article 2(a) of Directive 90/313/EEC, transposed into German law by the Umweltinformationsgesetz (Law on information on the environment; 'the UIG') adopted on 8 July 1994.

After Mr Mecklenburg's actions challenging that decision were rejected by Kreis Pinneberg and by the Schleswig-Holsteinisches Verwaltungsgericht, he appealed against those decision to the Schleswig-Holsteinische Obergerverwaltungsgericht (Germany) which, while considering that the statement of views which Mr Mecklenburg sought to obtain constituted an 'administrative measure for the protection of the environment' within the meaning of Article 2(a) of Directive 90/313/EEC, made a request for a preliminary ruling to the Court of Justice concerning, inter alia, the question whether a statement of views given in development consent proceedings by a subordinate countryside protection authority participating in those proceedings as a representative of a public interest could be regarded as an administrative measure designed to protect the environment within the meaning of Article 2(a) of Directive 90/313/EEC.

According to the Court, it follows from the wording of that provision that the Community legislature intended to make the concept of 'information relating to the environment' a broad one, embracing both information and activities relating to the state of various aspects of the environment mentioned therein, and that 'administrative measures' is merely an example of the 'activities' or 'measures' covered by the directive.

In order to constitute information relating to the environment for those purposes, therefore, it is sufficient for a statement of views put forward by the administration to be an act capable of adversely affecting or protecting the state of one of the sectors of the environment covered by the directive. That is the case where a statement of views put forward by a countryside protection authority in development consent proceedings is capable of influencing the outcome of those proceedings as regards interests pertaining to the protection of the environment (paragraphs 19-22, operative part 1).

Judgment of 26 June 2003, Commission v France (C-233/00, EU:C:2003:371)

The Commission brought an action under Article 226 EC for a declaration that, by failing to transpose Articles 2(a) and 3(2), (3) and (4) of Council Directive 90/313/EEC correctly, the French Republic had failed to fulfil its obligations under that directive and under the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 288 TFEU).

The French Republic considered that the provisions of Law No 78-753 of 17 July 1978 establishing various measures to improve relations between administrative authorities and the public and various administrative, social and fiscal provisions and Decree No 88-465 of 28 April 1988 on the procedure for access to administrative documents transposed Directive 90/313/EEC into French law. Although the French Government acknowledged that documents held by a public authority acting as a private person and without any connection with public service were not covered by Law No 78-753, it considered that such documents could not constitute 'information relating to the environment' within the meaning of Directive 90/313/EEC.

According to the Court, in the light of its actual wording and taking account, in particular, of the use of the words 'any ... information', the scope of application of Article 2(a), and consequently of Directive 90/313/EEC, must be considered to have been intended to be wide. It thus covers all information which relates either to the state of the environment or to activities or measures which could affect it, or to activities or measures intended to protect the environment, without the list in that provision including any indication such as to restrict its scope, so that 'information relating to the environment' within the meaning of Directive 90/313/EEC must be understood to include documents which are not related to carrying out a public service (paragraphs 44, 47).

Judgment of 16 December 2010, Stichting Natuur en Milieu and Others (C-266/09, EU:C:2010:779)

Following a request made by the company Bayer, the Minister for Health, Welfare and Sport, acting by agreement with the Secretary of State for Agriculture, Nature Protection and Fisheries, amended the regulation on residues of pesticides. That amendment set inter alia a new threshold for the maximum permitted residue level for the pesticide propamocarb on or in lettuce.

Stichting Natuur en Milieu, Vereniging Milieudefensie and Vereniging Goede Waar & Co. subsequently asked the College voor de toelating van bestrijdingsmiddelen ('the CTB') to provide them with all the information which formed the basis for the adoption of the ministerial regulation in question. On 8 March 2005, the CTB rejected that request on the basis of Article 22 of the Law on Pesticides of 1962 concerning confidentiality. The applicants lodged an objection against that decision before the CTB. After consulting with the company Bayer concerning the confidentiality of certain information in the documents concerned, the CTB refused to disclose residue studies and field trial reports, in order to protect industrial secrets.

The applicants brought an action against that decision before the College van Beroep voor het bedrijfsleven (Netherlands), which made a request for a preliminary ruling to the Court of Justice concerning, inter alia, the question whether information which is the basis for the determination of a maximum permitted residue level for a plant protection product constitutes environmental information within the meaning of Article 2 of Directive 2003/4/EC and therefore falls within the material scope of that directive.

According to the Court, the term 'environmental information' in that provision must be interpreted as meaning that it includes information submitted within the framework of a national procedure for the authorisation, or the extension of the authorisation, of a plant protection product with a view to fixing

the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages.

Since it is intended to limit the risk that a component of biological diversity will be affected and the risk that residues of plant protection products will be dispersed in particular in soil or groundwater, the provision of information on the presence of such residues in or on a product, even though such information does not directly involve an assessment of the consequences of those residues for human health, concerns elements of the environment which may affect human health if excess levels of those residues are present, which is precisely what that information is intended to ascertain (paragraphs 42, 43, operative part 1).

Judgment of 22 December 2010, Ville de Lyon (C-524/09, EU:C:2010:822)

The Ville de Lyon requested the Caisse des dépôts et consignations ('the CDC'), as the body responsible for maintaining the national registry of greenhouse gas emission allowances, to communicate to it the volumes of emission allowances sold in 2005 by the operators of 209 urban heating sites situated throughout France.

Since the CDC refused to supply that information, relying inter alia on Article 10 of Commission Regulation (EC) No 2216/2004 for a standardised and secured system of registries,⁸ the Ville de Lyon brought an action before the Commission d'accès aux documents administratifs, which issued an opinion in favour of the supply of the documents relating to the trading data. However, the CDC reiterated its refusal to supply the information on the ground that the provisions of Directive 2003/4/EC were not intended to govern the communication of that trading data in the context of the scheme for emission allowances, for which the EU legislature had laid down specific rules in Directive 2003/87/EC⁹ and Regulation (EC) No 2216/2004.

The Ville de Lyon brought an action against that decision before the tribunal administratif de Paris (France), which made a request for a preliminary ruling to the Court of Justice concerning, inter alia, the question whether the reporting of trading data was governed by one of the exceptions laid down in Article 4 of Directive 2003/4/EC or by the provisions of Directive 2003/87/EC and Regulation (EC) No 2216/2004, adopted pursuant to that directive.

According to the Court, the reporting of trading data relating to the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions, comes exclusively under the specific rules governing public reporting and confidentiality contained in Directive 2003/87/EC, in the version resulting from Directive 2004/101/EC,¹⁰ and those contained in Regulation (EC) No 2216/2004.

Those are data relating to transferred allowances, an accurate accounting of which is to be kept by the Member States in their respective national registries, of which the technical features and rules relating to the keeping, reporting and confidentiality of the information contained in those registries are determined by Regulation (EC) No 2216/2004. Those data therefore come within the scope of Article 19 of Directive 2003/87/EC and not that of Article 17. Since Article 19 of Directive 2003/87/EC does not refer to Directive 2003/4/EC in the same way as in Article 17, it must be held that the EU legislature did not intend to make requests concerning trading data subject to the general provisions of Directive 2003/4/EC

⁸ Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87/EC of the European Parliament and of the Council and Decision No 280/2004/EC of the European Parliament and of the Council (OJ L 386, 29.12.2004, p. 1).

⁹ Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ L 275, 25.10.2003, p. 32).

¹⁰ Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 amending Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, in respect of the Kyoto Protocol's project mechanisms (OJ L 338, 13.11.2004, p. 18).

but that, on the contrary, it sought to introduce, in respect of those data, a specific, exhaustive scheme for their public reporting and confidentiality (paragraphs 39-41, operative part 1).

Judgment of 23 November 2016, Bayer CropScience and Stichting De Bijenstichting (C-442/14, EU:C:2016:890)

The College voor de toelating van gewasbeschermingsmiddelen en biociden, the competent Dutch authority for the granting and amending of authorisations to place plant protection products and biocides on the market ('the CTB'), decided to amend the authorisations of several plant protection products and one biocide based on imidacloprid, a substance with an insecticide effect. Stichting De Bijenstichting ('Bijenstichting'), a Dutch association for the protection of bees, made a request, on the basis of Directive 2003/4/EC to the CTB for disclosure of documents concerning those authorisations. Bayer, a company operating, inter alia, in the fields of crop protection and pest control and the holder of a large number of those authorisations, objected to that disclosure, in particular on the ground that it would infringe copyright and adversely affect the confidentiality of commercial or industrial information.

The CTB initially refused Bijenstichting's requests for disclosure. Following an appeal by Bijenstichting against that refusal, the CTB partially reversed the earlier decision in relation to some of the requested documents, considering, inter alia, after weighing the general interest in disclosure against the protection of the intellectual property rights of the holder of the authorisation to place the product in question on the market, that factual information relating to actual emissions of plant protection products or biocides into the environment should be regarded as 'information on emissions into the environment', within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4/EC, whereas the remaining documents were not considered to constitute such information within the meaning of that provision.

Both Bayer and Bijenstichting challenged that decision before the College van Beroep voor het bedrijfsleven (Netherlands), which made a request for a preliminary ruling to the Court of Justice concerning, inter alia, the interpretation of 'information relating to emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4/EC.

According to the Court, that concept covers information concerning the nature, composition, quantity, date and place of the emissions into the environment of plant protection products and biocides and substances contained therein, and data concerning the medium to long-term consequences of those emissions on the environment, in particular information relating to residues in the environment following application of the product in question, and studies on the measurement of the substance's drift during that application, whether those data come from studies performed entirely or in part in the field or from laboratory or translocation studies.

That interpretation of 'information on emissions into the environment' does not in any way mean that all data contained in dossiers for authorisation to place plant protection products or biocides on the market, in particular, all data from studies carried out in order to obtain that authorisation, are covered by that concept and must always be disclosed. Only data relating to emissions into the environment are covered by that concept, which excludes, inter alia, not only information which does not concern emissions from the product in question into the environment, but also information which relates to hypothetical emissions, that is to say emissions which are not actual or foreseeable from the product or substance in question under representative circumstances of normal or realistic conditions of use. That interpretation does not therefore lead to disproportionate undermining of protection of the rights ensured by Articles 16 and 17 of the Charter of Fundamental Rights of the European Union and by Article 39(3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) (paragraphs 96, 100, 102, 103, operative part 2).

III. Concept of a 'public authority' required to grant access to environmental information

Judgment of 18 July 2013, Deutsche Umwelthilfe (C-515/11, EU:C:2013:523)

The Bundesministerium für Wirtschaft und Technologie (Ministry of Economic Affairs and Technology) refused to grant a request made by an environmental and consumer protection association, Deutsche Umwelthilfe eV, for disclosure of information contained in correspondence between that Ministry and representatives of the German automotive industry during the consultation which had preceded the adoption of legislation on energy consumption labelling. The Ministry relied, in that respect, on the provision of the Law on environmental information of 22 December 2004 exempting public authorities from the requirement to provide environmental information where they are engaged in the preparation of a regulatory instrument.

An action for annulment of that refusal having been brought before it, the Verwaltungsgericht Berlin (Germany) was uncertain whether that law was compatible with Directive 2003/4/EC, and in particular it raised the question of whether the first sentence of the second subparagraph of Article 2(2) of the directive, which refers to public authorities acting in a legislative capacity, can be applied to public authorities when they are preparing and adopting a regulatory instrument such as the one at issue in this case.

According to the Court of Justice, the first sentence of the second subparagraph of Article 2(2) of Directive 2003/4/EC must be interpreted as meaning that the option given to Member States by that provision of not regarding bodies or institutions acting in a legislative capacity as public authorities, required to allow access to the environmental information which they hold, may not be applied to ministries when they prepare and adopt normative regulations which are of a lower rank than a law.

In that regard, that provision may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure, and the scope of the derogations which it lays down must be determined in the light of the aims pursued by the directive. Indeed, it is the specific nature of the legislative process and its particular characteristics that justify the special rules relating to acts adopted by bodies acting in a legislative capacity in connection with the right to information, as provided for both by the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters and Directive 2003/4/EC. It follows that the nature of the act in question, and in particular the fact that it concerns an act of general application, is not, in itself, capable of exempting a body which adopts that act from its obligations under that directive.

Finally, in the absence of any specific provision of EU law with regard to what falls within the scope of a law or norm of equivalent rank for the purposes of applying the first sentence of the second subparagraph of Article 2(2) of Directive 2003/4/EC, that assessment is subject to the law of the Member States, provided that the effectiveness of the directive is not undermined (paragraphs 22, 29, 30, 35, 36 and operative part).

*Judgment of 19 December 2013 (Grand Chamber), Fish Legal and Shirley (C-279/12, EU:C:2013:853)*¹¹

In this case (see also section I above, entitled 'The Aarhus Convention and EU law'), the Court of Justice considered that undertakings, such as water companies, which provide public services relating to the environment could be under the control of a body or person falling within Article 2(2)(a) or (b) of Directive 2003/4/EC, and should therefore be classified as 'public authorities' by virtue of Article 2(2)(c) of that directive, if they do not determine in a genuinely autonomous manner the way in which they provide those services, since a public authority covered by Article 2(2)(a) or (b) of the directive is in a position to exert decisive influence on their action in the environmental field.

The mere fact that the entity is a commercial company subject to a specific system of regulation for the sector in question cannot exclude control within the meaning of Article 2(2)(c) of Directive 2003/4/EC since it may follow from the system concerned that the entity does not have genuine autonomy vis-à-vis the State, even if the latter is no longer in a position, following privatisation of the sector in question, to determine the entity's day-to-day management (paragraphs 68, 70, 71, 73, operative part 2).

In addition, Article 2(2)(b) of Directive 2003/4/EC must be interpreted as meaning that a person falling within that provision constitutes a public authority in respect of all the environmental information which it holds. As is clear from Article 3(1) of Directive 2003/4/EC, the directive's central provision which is essentially identical to Article 4(1) of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, if an entity is classified as a public authority for the purposes of one of the three categories referred to in Article 2(2) of that directive, it is obliged to disclose to any applicant all the environmental information falling within one of the six categories of information set out in Article 2(1) of the directive that is held by or for it, except where the application is covered by one of the exceptions provided for in Article 4 of the directive (paragraphs 78, 83, operative part 3).

IV. Grounds for refusal of public access to environmental information

Judgment of 16 December 2010, Stichting Natuur en Milieu and Others (C-266/09, EU:C:2010:779)

In this case (see also section II above, entitled 'Concept of "information relating to the environment"'), the College van Beroep voor het bedrijfsleven (Netherlands) also asked the Court of Justice whether the balancing of interests prescribed by Article 4 of Directive 2003/4/EC must be carried out in each individual case or whether it can be done once for all by a legislative measure. In addition, the referring court raised the issue of the compatibility of that provision with Article 14 of Directive 91/414/EEC¹² which provides for the unconditional confidentiality of industrial and commercial information 'without prejudice to Council Directive [2003/4]'.

¹¹ This judgment was presented in the 2013 Annual Report, p. 46.

¹² Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

According to the Court, Article 4 of Directive 2003/4/EC must be interpreted as meaning that the balancing exercise it prescribes between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities, even if the national legislature were by a general provision to determine criteria to facilitate that comparative assessment of the interests involved.

Neither Article 14 of Directive 91/414/EEC concerning the placing of plant protection products on the market nor any other provision of Directive 2003/4/EC suggests that the balancing of the interests involved, as prescribed in Article 4 of Directive 2003/4/EC, could be substituted by a measure other than an examination of those interests in each individual case. Consequently, that does not prevent the national legislature from determining, by a general provision, criteria to facilitate that comparative assessment of the interests involved, provided only that that provision does not dispense the competent authorities from actually carrying out a specific examination of each situation submitted to them in connection with a request for access to environmental information made on the basis of Directive 2003/4/EC (paragraphs 57-59, operative part 3).

Judgment of 28 July 2011, Office of Communications (C-71/10, EU:C:2011:525)

The United Kingdom Government set up a website in order to provide the public with information — voluntarily provided by mobile phone operators — on the location of mobile phone base stations. The Office of Communications subsequently refused to grant a request submitted to it for the grid references for each base station, on the ground that the disclosure of that information would include the locations of the sites used to provide the police and emergency service radio network, which could adversely affect public security within the meaning of Article 4(2)(b) of Directive 2003/4/EC, and that it would also adversely affect, within the meaning of Article 4(2)(e) of the directive, the intellectual property rights of the mobile telephone operators concerned. The Information Commissioner, and subsequently the Information Tribunal, nevertheless ordered the disclosure of the information in question. The Information Tribunal found, *inter alia*, that the adverse effect on the intellectual property rights of mobile phone operators could not outweigh the public interest in disclosure of that information.

The Supreme Court of the United Kingdom, before which the dispute was brought, made a request for a preliminary ruling to the Court of Justice, seeking to ascertain the balance of interests required by Directive 2003/4/EC where disclosure of information was liable to have adverse effects on various interests protected by more than one exception laid down in Article 4(2) of that directive, even though, in the case of either exception viewed separately, that adverse effect was not sufficient to outweigh the public interest in disclosure.

According to the Court, Article 4(2) of Directive 2003/4/EC must be interpreted as meaning that, where a public authority holds environmental information or such information is held on its behalf, it may, when weighing the public interests served by disclosure against the interests served by refusal to disclose, in order to assess a request for that information to be made available to a natural or legal person, take into account cumulatively a number of the grounds for refusal set out in that provision (paragraph 32 and operative part).

Judgment of 15 January 2013 (Grand Chamber), Križan and Others (C-416/10, EU:C:2013:8)¹³

In a dispute between, on the one hand, Mr Križan and 43 other residents of the town of Pezinok, as well as that town, and, on the other hand, the Slovenská inšpekcia životného prostredia (Slovak Environment

¹³ This judgment was presented in the 2013 Annual Report, p. 45.

Inspection; 'the inšpekcia') concerning the lawfulness of decisions authorising the construction and operation of a landfill site, the applicants initially invoked the incomplete nature of the application for a permit, since it did not include the urban planning decision required under the Slovak Law No 245/2003, which transposed Directive 96/61/EC,¹⁴ and then challenged the non-publication of that urban planning decision, on the alleged ground that it constituted confidential commercial information.

After the inšpekcia rejected that action, the applicants appealed to the Najvyšší súd Slovenskej republiky (Slovakia) which referred several questions to the Court of Justice for a preliminary ruling, concerning inter alia, the interpretation of Directive 96/61/EC, as amended by Regulation (EC) No 166/2006.¹⁵ It also asked the Court whether the public concerned should have access, from the beginning of the authorisation procedure for a landfill site, to the urban planning decision on the location of that installation and whether the refusal to make that decision available to the public could be justified by relying on the protection of the confidentiality of commercial or industrial information.

The Court held that Directive 96/61/EC concerning integrated pollution prevention and control must be interpreted as meaning that it does not allow the competent national authorities to refuse the public concerned any access, even partial, to a decision by which a public authority authorises, having regard to the applicable urban planning rules, the location of an installation which falls within the scope of that directive, by relying on the protection of the confidentiality of commercial or industrial information provided for by national or European Union law to protect a legitimate economic interest, taking account of, inter alia, the importance of the location of one or another of the activities referred to in Directive 96/61/EC.

Even if certain elements included in the grounds for an urban planning decision may contain confidential commercial or industrial information, the protection of the confidentiality of such information cannot be used, in breach of Article 4(4) of Directive 2003/4/EC, to refuse the public concerned any access, even partial, to the urban planning decision concerning the location of the installation at issue in this case (paragraphs 82, 83, 91, operative part 2).

Judgment of 23 November 2016, Bayer CropScience and Stichting De Bijenstichting (C-442/14, EU:C:2016:890)

In this case (see also section II above, entitled 'Concept of "information relating to the environment"'), the College van Beroep voor het bedrijfsleven (Netherlands) also referred a question to the Court of Justice — in the context of the interpretation of the concept of 'information on emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4/EC — concerning the application of the exception relating to commercial or industrial information within the meaning of point (d) of the first subparagraph of Article 4(2) of that directive.

According to the Court, the objective of Directive 2003/4/EC is to ensure a general principle of access to environmental information held by or for public authorities and, as is apparent from recital 9 and Article 1 of that directive, to achieve the widest possible systematic availability and dissemination to the public of environmental information. It follows, that, as expressly provided for in the second subparagraph of Article 4(4) of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters and recital 16 and the second subparagraph of Article 4(2) of Directive 2003/4/EC, the disclosure of information must be the general rule and the grounds for refusal referred to by those provisions must be interpreted in a restrictive way.

¹⁴ Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ L 257, 10.10.96, p. 26).

¹⁵ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 93/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1).

In that regard, by establishing that the confidentiality of commercial or industrial information may not be invoked against the disclosure of information relating to emissions into the environment, the second subparagraph of Article 4(2) of Directive 2003/4/EC allows for specific application of that rule and of the principle of the widest possible access to the environmental information held by or for public authorities. It follows that it is not necessary to apply a restrictive interpretation of 'emissions into the environment' and 'information on emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4/EC (paragraphs 55-58).

It is not necessary, for the purposes of interpreting 'emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4/EC to draw a distinction between that concept and those of 'discharges' and 'releases' into the environment.

First, no such distinction is made by the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, which merely provides in point (d) of the first subparagraph of Article 4(4) that the confidentiality of commercial and industrial information may not be invoked against the disclosure of information on emissions which is relevant for the protection of the environment. Secondly, a distinction between emissions, discharges and other releases is irrelevant in the light of the objective of Directive 2003/4/EC concerning the disclosure of environmental information and would be artificial. Emissions of gas or substances into the atmosphere and other releases or discharges such as the release of substances, preparations, organisms, micro-organisms, vibrations, heat or noise into the environment, in particular into air, water or land, may affect those various elements of the environment. Furthermore, the concepts of emissions, discharges and releases broadly coincide, as shown by the use of the expression 'other releases' in Article 2(1)(b) of that directive from which it follows that emissions and discharges are also releases into the environment (paragraphs 62-65, 67).

The second subparagraph of Article 4(2) of Directive 2003/4/EC must be interpreted as meaning, in the event of a request for access to information on emissions into the environment whose disclosure would adversely affect one of the interests referred to in points (a), (d), and (f) to (h) of the first subparagraph of Article 4(2) of that directive, that only relevant data which may be extracted from the source of information concerning emissions into the environment must be disclosed where it is possible to separate those data from the other information contained in that source, which is for the national court to assess (paragraph 106, operative part 3).

V. Amount of the charge imposed for access to environmental information

*Judgment of 6 October 2015, East Sussex County Council (C-71/14, EU:C:2015:656)*¹⁶

In connection with a real property transaction, PSG Eastbourne, a property search company, requested environmental information from the East Sussex County Council. The County Council supplied the information requested, obtained from a database which was also used for carrying out other tasks, and imposed several charges, applying a standard scale of charges.

¹⁶ This judgment was presented in the 2015 Annual Report, p. 65.

Following a complaint by PSG Eastbourne against the imposition of such charges, the Information Commissioner issued a decision notice finding that those charges were not in accordance with regulation 8(3) of the Environmental Information Regulations 2004 (the EIR 2004) — which transpose Directive 2003/4/EC into English law — in that they included costs other than postage or photocopying costs or other disbursements associated with supplying the information requested. The County Council appealed against that decision notice, arguing that the charges set out in the scale were lawful and did not exceed a reasonable amount.

The First-tier Tribunal (United Kingdom) made a request for a preliminary ruling to the Court of Justice concerning the interpretation of Article 5(2) of Directive 2003/4/EC and the concept of a 'reasonable amount', and in order to ascertain whether a proportion of the costs associated with maintaining the County Council's database and the overheads attributable to the staff time spent on maintaining the database could be included in the charges imposed.

According to the Court, Article 5(2) of Directive 2003/4/EC must be interpreted as meaning that the charge for supplying a particular type of environmental information may not include any part of the cost of maintaining a database used for that purpose by the public authority, but may include the overheads attributable to the time spent by the staff of the public authority on answering individual requests for information, properly taken into account in fixing the charge, provided that the total amount of the charge does not exceed a reasonable amount.

It follows from Article 5(1) in conjunction with Article 3(5)(c) of Directive 2003/4/EC that, in principle, it is only the costs that do not arise from the establishment and maintenance of those registers, lists and facilities for examination that are attributable to the 'supplying' of environmental information and are costs for which the national authorities are entitled to charge under Article 5(2) of Directive 2003/4/EC. Such costs encompass not only postal and photocopying costs but also the costs attributable to the time spent by the staff of the public authority concerned on answering an individual request for information, which includes the time spent on searching for the information and putting it in the form required. Furthermore, in view of the use of the expression 'actual costs' in recital 18 of Directive 2003/4/EC, overheads, properly taken into account, may in principle be included in the calculation of the charge provided for in Article 5(2) of Directive 2003/4/EC. The inclusion of overheads in the calculation of that charge corresponds to normal accounting principles. However, those costs can be included in the calculation of that charge only to the extent that they are attributable to a cost factor falling within the 'supplying' of environmental information (paragraphs 34, 36, 39, 40, 45, operative part 1).

As regards the second condition laid down in Article 5(2) of Directive 2003/4/EC, namely that the total amount of the charge provided for in that provision must not exceed a reasonable amount, any interpretation of the expression 'reasonable amount' that may have a deterrent effect on persons wishing to obtain information or that may restrict their right of access to information must be rejected. In order to assess whether a charge made under Article 5(2) of Directive 2003/4/EC has a deterrent effect, account must be taken both of the economic situation of the person requesting the information and of the public interest in protection of the environment. That assessment cannot therefore relate solely to the person's economic situation, but must also be based on an objective analysis of the amount of the charge. To that extent, the charge must not exceed the financial capacity of the person concerned, nor in any event appear objectively unreasonable.

Moreover, the mere fact that a charge does not have a deterrent effect in relation to the economic situation of the persons concerned does not release the public authority from its obligation also to ensure that the charges do not appear unreasonable to the public, having regard to the public interest in protection of the environment (paragraphs 42-44).

VI. Right of access to environmental information held by the EU institutions

Judgment of 14 November 2013, LPN and Finland v Commission (C-514/11 P and C-605/11 P, EU:C:2013:738)

The Liga para a Protecção da Natureza ('the LPN') is a non-governmental organisation whose objective is the protection of the environment. In 2003, it lodged a complaint with the European Commission in which it claimed that the dam construction project on the River Sabor, in Portugal, infringed Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.¹⁷ In 2007, the LPN applied to the Commission for access to information on the processing of its complaint and asked to consult certain documents. The Commission rejected those requests on the ground that the requested documents concerned an ongoing procedure, both as regards the exception laid down in the third indent of Article 4(2) of Regulation (EC) No 1049/2001, relating to the protection of inspections, investigations and audits, and as regards the exception laid down in Article 6(1) of Regulation (EC) No 1367/2006, under which an overriding public interest in disclosure must be deemed to exist where the information requested relates to emissions into the environment, with the exception of investigations, in particular those concerning possible infringements of Community law.

After the General Court rejected the LPN's action for annulment of the decision at issue,¹⁸ LPN and the Republic of Finland lodged an appeal against the General Court's judgment before the Court of Justice.

The Court of Justice ruled, *inter alia*, on the question whether it was appropriate to recognise the existence of a general presumption that, in the circumstances of the case, the disclosure of documents relating to an infringement procedure would undermine protection of the purpose of the investigation. Since the wording and the scheme of Article 6(1) of Regulation (EC) No 1367/2006 indicate clearly the express intention of the legislature to remove infringement procedures from the scope of that provision as a whole, the Court concluded that the General Court had not erred in law by holding that Article 6(1) of Regulation (EC) No 1367/2006 did not affect the examination which the Commission must carry out pursuant to Regulation (EC) No 1049/2001 when a request for access concerns documents relating to an infringement procedure at the pre-litigation stage (paragraphs 84-85).

Judgment of 23 November 2016, Commission v Stichting Greenpeace Nederland and PAN Europe (C-673/13 P, EU:C:2016:889)

Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) applied to the Commission, on the basis of both Regulation (EC) No 1049/2001 and Regulation (EC) No 1367/2006, for access to several documents relating to the first authorisation of the placing of glyphosate on the market as an active substance, granted under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market. In 2011, the Secretary General of the Commission granted access to the draft report drawn up by the Federal Republic of Germany, with the exception of volume 4 thereof which the German authorities refused to disclose. The Secretary General of the Commission considered, *inter alia*, that there was no overriding public interest, within the meaning of Article 6(1) of Regulation (EC) No 1367/2006, justifying the disclosure of that document and that it was apparent from the procedure by which glyphosate had been included in Annex I to Directive 91/414 that the requirements laid down by Regulation (EC) No 1367/2006 concerning public disclosure of information

¹⁷ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7).

¹⁸ Judgment of 9 September 2011, LPN v European Commission (T-29/08, EU:T:2011:448).

on the environmental effects of that substance had been taken into account, with the result that the protection of the interests of the manufacturers of that substance had to prevail.

The General Court upheld the action for annulment brought by Greenpeace Nederland and PAN Europe against that decision, on the ground, *inter alia*, that the information in respect of which disclosure was sought related to emissions into the environment within the meaning of the first sentence of Article 6(1) of Regulation (EC) No 1367/2006.¹⁹ The European Commission brought an appeal against the General Court's judgment before the Court of Justice.

In its judgment, which set aside the judgment under appeal, the Court held that the concept of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation (EC) No 1367/2006 may not be interpreted restrictively. Regulation (EC) No 1049/2001 is intended, as is apparent from recital 4 and Article 1 thereof, to give the fullest possible effect to the right of public access to documents of the institutions. Likewise, Regulation (EC) No 1367/2006 aims, as provided for in Article 1 thereof, to ensure the widest possible systematic availability and dissemination of the environmental information held by the institutions and bodies of the European Union.

It is only in so far as they derogate from the principle of the widest possible public access to documents of the institutions that exceptions to that principle, in particular those provided for in Article 4 of Regulation (EC) No 1049/2001, must be interpreted and applied strictly. The need for such a restrictive interpretation is, moreover, confirmed by recital 15 of Regulation (EC) No 1367/2006. On the other hand, by establishing a presumption that the disclosure of information which relates to emissions into the environment, with the exception of information relating to investigations, is deemed to be in the overriding public interest, compared with the interest in protecting the commercial interests of a particular natural or legal person, with the result that the protection of those commercial interests may not be invoked to preclude the disclosure of that information, the first sentence of Article 6(1) of Regulation (EC) No 1367/2006 derogates from the rule requiring the weighing up of the interests laid down in Article 4(2) of Regulation (EC) No 1049/2001. Nonetheless, the first sentence of Article 6(1) thus allows actual implementation of the principle that the public should have the widest possible access to information held by the institutions and bodies of the European Union, with the result that a narrow interpretation of that provision cannot be justified (paragraphs 51-54).

The Court noted, however, in concluding that the judgment under appeal should be set aside, that that concept may not, in any event, include information containing any kind of link, even direct, to emissions into the environment. If that concept were interpreted as covering such information, it would to a large extent deprive the concept of 'environmental information' as defined in Article 2(1)(d) of Regulation (EC) No 1367/2006 of any meaning. Such an interpretation would deprive of any practical effect the possibility, laid down in the first indent of Article 4(2) of Regulation (EC) No 1049/2001, for the institutions to refuse to disclose environmental information on the ground, *inter alia*, that such disclosure would have an adverse effect on the protection of the commercial interests of a particular natural or legal person and would jeopardise the balance which the EU legislature intended to maintain between the objective of transparency and the protection of those interests. It would also constitute a disproportionate interference with the protection of business secrecy ensured by Article 339 TFEU (paragraph 81).

¹⁹ Judgment of the General Court of 8 October 2013, *Stichting Greenpeace Nederland and PAN Europe v European Commission* (T-545/11, EU:T:2013:523, paragraph 75).

Judgment of 13 July 2017, Saint-Gobain Glass Deutschland v Commission (C-60/15 P, EU:C:2017:540)

Saint-Gobain, a company involved in the world glass market, which operates installations coming within the scope of Directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community, applied to the Commission, on the basis of Regulation (EC) No 1049/2001 and Regulation (EC) No 1367/2006, for access to a document communicated by the Federal Republic of Germany to the Commission under the procedure provided for in Article 15(1) of Commission Decision 2011/278/EU of 27 April 2011.²⁰ That document contained information relating to certain installations of Saint-Gobain situated in Germany.

Since the requested information originated from the Federal Republic of Germany, the Commission, pursuant to Article 4(5) of Regulation (EC) No 1049/2001, consulted that Member State, which initially opposed the disclosure of that information. Following the decision of the German authorities to publish certain information, the Commission granted partial access to the requested information, on the basis of the first subparagraph of Article 4(3) of Regulation No 1049/2001. It considered, inter alia, that the full disclosure of the requested information would seriously undermine its decision-making process and prejudice the dialogue between the Commission and the Member States. In addition, it considered that Article 6 of Regulation (EC) No 1367/2006 did not contain any provision under which the application of the exception laid down in the first subparagraph of Article 4(3) of Regulation No 1049/2001 could be excluded and it found that there was no overriding public interest, within the meaning of that provision, justifying the full disclosure of the requested information, since the interests invoked by the applicant were, according to the Commission, purely private in nature.

The General Court rejected Saint-Gobain's action for annulment of that decision, and Saint-Gobain appealed against that judgment²¹ before the Court of Justice.

In its judgment, the Court annulled the General Court's judgment, as well as the contested decision of the Commission, after finding that the General Court had erred in law in not having interpreted the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 strictly. In that respect, the Court held, in particular, that the concept of 'decision-making process' referred to in that provision must be construed as relating to decision-making, without covering the entire administrative procedure which led to the decision. The requirement of strict interpretation entails, moreover, that the mere reference to a risk of negative repercussions and to the possibility that interested parties may influence the procedure do not suffice to prove that disclosure of internal documents would seriously undermine the ongoing decision-making process (paragraphs 61, 63, 75-78).

Since the request for access to information in question concerned environmental information falling within the scope of Regulation (EC) No 1367/2006, Article 6 of which adds more specific rules to the provisions of Regulation (EC) No 1049/2001, the Court pointed out that that strict interpretation of the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 also applied in view of the purpose of Regulation (EC) No 1367/2006, is to apply the provisions of the Aarhus Convention to the institutions and bodies of the European Union (paragraphs 65, 66, 78-81).

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The judgments mentioned in this fact sheet are indexed in the Digest of the case-law, under section 4.23.

²⁰ Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ L 130, 17.5.2011, p. 1).

²¹ Judgment of the General Court of 11 December 2014, Saint-Gobain Glass Deutschland v Commission (T-476/12, EU:T:2014:1059).