



Press and Information

General Court of the European Union

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Judgment in Cases T-716/14

Anthony C. Tweedale v European Food Safety Agency (EFSA) and T-329/17 Hautala and Others v EFSA

EFSA's decisions refusing access to the toxicity and carcinogenicity studies on the active substance glyphosate are annulled

The public interest in having access to the information relating to emissions into the environment is specifically to know not only what is, or foreseeably will be, released into the environment, but also to understand the way in which the environment could be affected by the emissions in question

Glyphosate is a chemical product used in pesticides which are plant protection products and is one of the most widely used herbicides in the EU.

Glyphosate was included on the list of active substances for the period from 1 July 2002 to 30 June 2012. That listing was temporarily extended until 31 December 2015. In view of the renewal of approval of the active substance glyphosate, Germany, as Rapporteur Member State, submitted to the Commission and to the European Food Safety Authority (EFSA) a 'draft renewal assessment report', published by EFSA on 12 March 2014.

In Case T-716/14, Mr Anthony C. Tweedale submitted to EFSA a request for access to documents pursuant to the regulation on public access to documents¹ and the regulation on the application of the provisions of the Aarhus Convention on access to information² ('the Aarhus Regulation'). That request concerned two toxicity studies: 'the two "key studies" used in order to set glyphosate's acceptable daily intake (ADI)'.

In Case T-329/17, Ms Heidi Hautala, Ms Michèle Rivasi, Mr Benedek Jávor and Mr Bart Staes, Members of the European Parliament, submitted to EFSA a request for access to documents pursuant to the same regulations. Their request concerned the parts relating to 'material, experimental conditions and methods' and to 'results and discussion' of the unpublished studies on the carcinogenicity of glyphosate. In their request, the applicants pointed out that, in March 2015, the International Agency for Research on Cancer had concluded that glyphosate was potentially carcinogenic and that, nevertheless, in November 2015, the EFSA peer review had concluded that glyphosate would be unlikely to pose a carcinogenic hazard to humans.

In both cases, EFSA refused access to the documents, basing its decision, inter alia, on the following reasons: (i) disclosure of that information might seriously harm the commercial and financial interests of the companies which had submitted the study reports; (ii) there was no overriding public interest justifying disclosure; (iii) there was no overriding public interest justifying disclosure of the parts of the studies to which the applicants sought access, since those parts do not constitute information which 'relates to emissions into the environment', and (iv) EFSA considered that access to the parts of those studies was not necessary to verify the scientific assessment of the risks carried out in accordance with Regulation No. 1107/2009.

¹ 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 2001 L 145, p. 43).

² 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 2006 L 264, p. 13).

The applicants then brought an action before the General Court seeking annulment of the decisions refusing access.

By today's judgments, the General Court, first of all, refers to the 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. That means that an EU institution, hearing a request for access to a document, cannot justify its refusal to divulge it on the basis of the exception relating to the protection of the commercial interests of a particular natural or legal person, where the information contained in that document constitutes information which 'relates to emissions into the environment'.

Next, the General Court examines whether the information contained in the requested studies constitutes information which 'relates to emissions into the environment' for the purposes of the Aarhus Regulation.

The General Court considers that an active substance contained in plant protection products, such as glyphosate, in the course of normal use, is intended to be discharged into the environment by virtue of its function, and its foreseeable emissions cannot, therefore, be regarded as purely hypothetical. In any event, glyphosate emissions cannot be classified as merely foreseeable emissions. The requested studies formed part of the dossier for the renewal of approval of the active substance glyphosate.

In that respect, the General Court notes that glyphosate has been listed as an active substance since 1 July 2002. Since that date, glyphosate has been authorised in Member States and has actually been used in plant protection products. Glyphosate is one of the most widely used herbicides in the EU. Glyphosate emissions into the environment are therefore a reality. That active substance is present particularly as residues in plants, water and food. Hence, the requested studies are studies which are intended to establish the carcinogenicity or toxicity of an active substance which is actually present in the environment.

The General Court concludes that EFSA cannot argue that the requested studies do not concern actual emissions or the effects of actual emissions.

With regard to EFSA's argument that a link with emissions into the environment is not sufficient for those studies to be covered by the Aarhus Regulation, the General Court states that it is clear from the case-law of the Court of Justice that the concept of information which 'relates to emissions into the environment' for the purposes of the Aarhus Regulation is not limited to information which makes it possible to assess the emissions as such, but also covers information relating to the effects of those emissions.

Thus, the public must have access not only to information on emissions as such, but also to information concerning the medium to long-term consequences of those emissions on the state of the environment, such as the effects of those emissions on non-targeted organisms. The public interest in accessing information on emissions into the environment is specifically to know not only what is, or foreseeably will be, released into the environment, but also to understand the way in which the environment could be affected by the emissions in question.

The concept of information which 'relates to emissions into the environment' must therefore be interpreted as covering not only information on emissions as such, namely information concerning the nature, composition, quantity, date and place of those emissions, but also data concerning the medium to long-term consequences of those emissions on the environment. The General Court concludes that the requested studies must be regarded as constituting information which 'relates to emissions into the environment' and that an overriding public interest in disclosing the studies is deemed to exist. EFSA could not therefore refuse to disclose them on the ground that that would

have an adverse effect on the protection of the commercial interests of the owners of the requested studies.

In Case T-716/14 Tweedale, the General Court annuls the contested decision in so far as it refused to disclose the whole of the requested studies, with the exception of the names and signatures of the persons mentioned in those studies.

In Case T-329/17 Hautala and Others, the General Court annuls the contested decision in so far as EFSA refused access to the parts ‘material, experimental conditions and methods’ and ‘results and discussion’ of the requested studies.

NOTE: An appeal, limited to points of law only, may be brought before the Court of Justice against the decision of the General Court within two months of notification of the decision.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to EU law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

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The full text of the judgments [T-716/14](#) and [T-329/17](#) are published on the CURIA website on the day of delivery

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