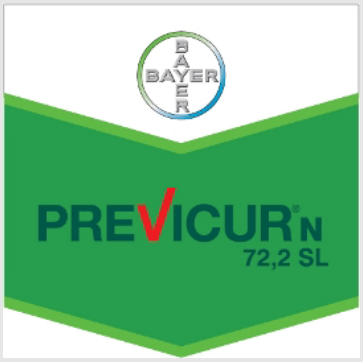
Court of Justice EU, 16 December 2010, Natuur en Milieu v Ctgb



TRADE SECRETS LAW

Term 'environmental information' includes information submitted for the authorisation f a plant protection product.

- **In those circumstances, the answer to Question 1 is that the term 'environmental information' in Article 2 of Directive 2003/4 must be interpreted as including 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 setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages.**

Interest of protection of industrial or commercial secret may be outweighed public interest served by disclosure.

- **In those circumstances, where a request is made to the competent authorities for access to environmental information that has been supplied by an applicant for an authorisation to place plant protection products on the market, and the request for protection of that information as industrial or commercial secrets within the meaning of Article 14 of Directive 91/414 appears to them to be justified, those authorities are nevertheless obliged to allow the request for access to that information if it relates to emissions into the environment or if, in other cases, the public interest served by disclosure appears to outweigh the interest served by the refusal to disclose.**

the balancing exercise on a case by case basis

- **It follows from the above considerations that the answer to Question 3 is that Article 4 of Directive 2003/4 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.**

Source: **curia.europa.eu**

Court of Justice EU, 31 March 2010

(J‑C. Bonichot (Rapporteur), K. Schiemann, L. Bay Larsen, C. Toader and A. Prechal)

JUDGMENT OF THE COURT (Fourth Chamber)

16 December 2010 (*)

(Environment – Plant protection products – Directive 91/414/EEC – Public access to information – Directives 90/313/EEC and 2003/4/EC – Temporal application – Concept of environmental information – Confidentiality of commercial and industrial information)

In Case C‑266/09,

REFERENCE for a preliminary ruling under Article 234 EC from the College van Beroep voor het bedrijfsleven (Netherlands), made by decision of 29 May 2009, received at the Court on 10 June 2009, in the proceedings

Stichting Natuur en Milieu,

Vereniging Milieudefensie,

Vereniging Goede Waar & Co.

v

College voor de toelating van gewasbeschermingsmiddelen en biociden, formerly College voor de toelating van bestrijdingsmiddelen,

other parties:

Bayer CropScience BV,

Nederlandse Stichting voor Fytofarmacie,

THE COURT (Fourth Chamber),

composed of J.‑C. Bonichot (Rapporteur), President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader and A. Prechal, Judges,

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 9 September 2010,

after considering the observations submitted on behalf of:

– Stichting Natuur en Milieu, by J. Rutteman and B.N. Kloostra, advocaat,

– Vereniging Milieudefensie, by B.N. Kloostra, advocaat,

– Vereniging Goede Waar & Co., by B.N. Kloostra, advocaat,

– the College voor de toelating van gewasbeschermingsmiddelen en biociden, formerly College voor de toelating van bestrijdingsmiddelen, by I.L. Rol, and by R. van den Tweel, advocaat,

– Bayer CropScience BV, by D. Waelbroeck, E. Antypas and E. Broeren, advocaten,

– the Netherlands Government, by C. Wissels and Y. de Vries, acting as Agents,

– the Greek Government, by S. Papaioannou and I. Chalkias, acting as Agents,

– the European Commission, by P. Oliver and B. Burggraaf, acting as Agents,

after hearing the **Opinion of the Advocate General** at the sitting on 23 September 2010,
gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) and 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 2003 L 41, p. 26).

2 The reference has been made in proceedings brought by Stichting Natuur en Milieu, Vereniging Milieudefensie and Vereniging Goede Waar & Co. for annulment of the decision of the College voor de toelating van gewasbeschermingsmiddelen en biociden, formerly College voor de toelating van bestrijdingsmiddelen, ('the CTB') refusing to disclose to them certain studies and reports on field trials concerning residues and effectiveness of the active substance propamocarb on or in lettuce ('the contested decision').

Legal context

European Union law

Directive 90/313/EEC

3 Under Article 3 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):

'1. Save as provided in this Article, Member States shall ensure that public authorities are required to make available information relating to the environment to any natural or legal person at his request and without his having to prove an interest.

Member States shall define the practical arrangements under which such information is effectively made available.

2. Member States may provide for a request for such information to be refused where it affects:

...

– commercial and industrial confidentiality, including intellectual property,

– the confidentiality of personal data and/or files,

– material supplied by a third party without that party being under a legal obligation to do so,

...

Information held by public authorities shall be supplied in part where it is possible to separate out information on items concerning the interests referred to above.

...'

Directive 90/642/EEC

4 Under Article 5b(2) of Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (OJ 1990 L 350, p. 71), as amended by Council Directive 97/41/EC of 25 June 1997 (OJ 1997 L 184, p. 33):

'Member States shall introduce arrangements for establishing maximum residue levels, whether permanent or temporary, for products referred to in Article 1(1), brought into their territories from a Member State of origin, taking into account good agricultural practice in the Member State of origin, and without prejudice to conditions necessary to protect the health of consumers, in cases where no maximum residue levels have been established for these products in accordance with the provisions of Articles 3(1) or 5a.'

Directive 91/414

5 In accordance with Article 5(1) of Directive 91/414:

'In the light of current scientific and technical knowledge, an active substance shall be included in Annex I for an initial period not exceeding 10 years, if it may be expected that plant protection products containing the active substance will fulfil the following conditions:

(a) their residues, consequent on application consistent with good plant protection practice, do not have any harmful effects on human or animal health or on groundwater or any unacceptable influence on the environment, and the said residues, in so far as they are of toxicological or environmental significance, can be measured by methods in general use;

(b) their use, consequent on application consistent with good plant protection practice, does not have any harmful effects on human or animal health or any unacceptable influence on the environment as provided for in Article 4(1)(b)(iv) and (v).'

6 Article 14 of Directive 91/414 provides:

'Member States and the Commission shall, without prejudice to Council Directive 90/313 ..., ensure that information submitted by applicants involving industrial and commercial secrets is treated as confidential if the applicant wishing to have an active substance included in Annex I or the applicant for authorisation of a plant protection product so requests, and if the Member State or the Commission accepts that the applicant's request is warranted.

Confidentiality shall not apply to:

...

– a summary of the results of the tests to establish the substance's or product's efficacy and harmlessness to humans, animals, plants and the environment,

...'

Directive 2003/4

7 Recital 5 in the preamble to Directive 2003/4 states:

'On 25 June 1998 the European Community signed the UN/ECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ("the Aarhus Convention"). Provisions of Community law must be consistent with that Convention with a view to its conclusion by the European Community.'

8 Under Article 2 of Directive 2003/4:

'For the purposes of this Directive:

1. "Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components,

including genetically modified organisms, and the interaction among these elements;
(b) factors, such as substances, energy, noise, radiation or waste, ... emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
...
(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).
...'

9 Article 4 of Directive 2003/4, 'Exceptions', provides in paragraph 2:

'Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:
...
(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
...
The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.
...'

10 Article 11 of Directive 2003/4 provides:

'Directive 90/313/EEC is hereby repealed with effect from 14 February 2005.
References to the repealed Directive shall be construed as referring to this Directive and shall be read in accordance with the correlation table in the Annex.'

Decision 2005/370/EC

11 By 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 2005 L 124, p. 1), the Council of the European Union approved that convention.

National legislation

12 In accordance with Article 22 of the Law on pesticides of 1962 (Bestrijdingsmiddelenwet 1962):

'1. The obligation of confidentiality on the basis of Article 2:5 of the General Law on administrative law (Algemene wet bestuursrecht) shall not apply to components of a pesticide which are injurious to humans or to animals or plants whose conservation is desired.
2. If a document submitted, in accordance with provisions of this law or provisions enacted under this law, to Our Minister concerned or to the college or to another person or institution contains information, or if information can be deduced from such a document, whose confidentiality is justified from the point of view of commercial secrets, Our Minister concerned or the college shall decide, on written request to that end from the person who submitted the document, that the information shall be treated confidentially. Such a request must be provided with reasons.
3. Our Minister concerned shall lay down rules on the information to which the obligation of confidentiality does not apply.'

13 By ministerial regulation of 19 October 1999, 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 inter alia set the maximum permitted residue level (MRL) for the pesticide propamocarb on or in lettuce at 15 mg/kg.

The dispute in the main proceedings and the questions referred for a preliminary ruling

14 The amendment to the MRL for propamocarb on or in lettuce took place at the request of the holder of the product 'Previcur N'. Bayer CropScience BV ('Bayer') is the successor of that holder.

15 By letter of 31 January 2005, the applicants in the main proceedings inter alia asked the CTB to provide them with all the information which was the basis for the above mentioned decision fixing the MRL.

16 By decision of 8 March 2005, the CTB rejected the request of the applicants in the main proceedings, on the basis of Article 22 of the Bestrijdingsmiddelenwet 1962. They lodged an objection against that decision by letter of 14 April 2005.

17 On 31 May 2005 the CTB informed Bayer of the request for information made by the applicants in the main proceedings. It gave Bayer an opportunity to submit a request for confidential treatment of certain information in the documents concerned.

18 By letter of 13 July 2005, Bayer inter alia identified the documents which in its opinion contained commercial secrets. These were principally studies on residues and reports of field trials. Bayer asked for those documents to be treated confidentially.

19 On 22 June 2007 the CTB refused to disclose the residue studies and field trial reports, in order to protect industrial secrets. It provided a list of documents copies of which could be supplied. The list was supplemented by a correcting decision of 17 July 2007.

20 The application made to the referring court by the applicants in the main proceedings is directed against the decision of 22 June 2007 and the correcting

decision of 17 July 2007. Those two acts together constitute the contested decision.
21 The referring court is uncertain essentially whether the national law on the basis of which disclosure of certain information was refused and its application in the present case are compatible with the obligations under Directive 2003/4.
22 More precisely, its uncertainty concerns, in addition to the application ratione temporis of Directive 2003/4 to the facts of the present case, the very concept of environmental information regulated by that directive. It asks, first, whether the information which is the basis of the definition of an MRL of a plant protection product constitutes such environmental information and therefore falls within the material scope of that directive.
23 Next, noting that Article 14 of Directive 91/414 provides for the unconditional confidentiality of industrial and commercial information, the referring court raises the question of the scope of that article, given that it is stated to apply 'without prejudice to Council Directive [2003/4]'. Article 4 of the latter directive gives information precedence over confidentiality in connection with industrial secrets, or at least requires the national authorities to balance the interests involved.
24 Finally, the national court questions whether that balancing of interests can be done generally, once for all, in the provisions adopted by the legislature or the competent administrative authorities, or whether it has to be done on a case by case basis.
25 In those circumstances the College van Beroep voor het bedrijfsleven decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
'1. Must the term "environmental information" in Article 2 of Directive 2003/4 … 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 setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages?
2. If Question 1 is answered in the affirmative, what is the relationship between Article 14 of Directive 91/414 … and Directive 2003/4 … in so far as it is relevant to application to information as defined in the previous question, and specifically, is that relationship such that Article 14 of Directive 91/414 … may be applied only if that does not detract from the obligations laid down in Article 4(2) of Directive 2003/4 …?
3. If it follows from the answers to Questions 1 and 2 above that the defendant in the present case is bound to apply Article 4 of Directive 2003/4 …, does Article 4 of that directive mean that the weighing prescribed in that provision of the general interest served by disclosure against the specific interest served by the refusal to disclose should take place at application level or that it may be effected in national legislation?'

The application to reopen the oral procedure

26 By letter of 7 October 2010, Bayer and the Nederlandse Stichting voor Fytofarmacie applied for the oral procedure to be reopened, submitting essentially that the parties should present argument on the question whether the information at issue in the main proceedings concerns emissions within the meaning of Article 4(2) of Directive 2003/4. In their view, that concept of emissions was analysed by the Advocate General in her Opinion even though, first, the referring court did not ask any question in this respect and, secondly, some parties did not make any submissions relating to that concept and those that did address it in their observations interpreted it in an entirely different way from that adopted in the Opinion.
27 It should be recalled that the Court may of its own motion, or on a proposal from the Advocate General, or at the request of the parties, order the reopening of the oral procedure in accordance with Article 61 of the Rules of Procedure if it considers that it lacks sufficient information, or that the case must be dealt with on the basis of an argument which has not been debated between the parties (see, inter alia, **Case C-42/07 Liga Portuguesa de Futebol Profissional and Bwin International [2009] ECR I-7633, paragraph 31** and the case-law cited).
28 On the other hand, neither the Statute of the Court of Justice of the European Union nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion (see **Liga Portuguesa de Futebol Profissional and Bwin International, paragraph 32**).
29 The Court, having heard the Advocate General, takes the view that in the present case it has all the material necessary to answer the questions referred by the referring court, and that there is no need to consider the case by reference to an argument which was not the subject of debate before it.
30 The request to reopen the oral procedure must therefore be rejected.

Consideration of the questions referred

Preliminary observations

31 The referring court considers that the facts of the main proceedings should be assessed from the point of view of the law applicable on the date of the contested decision. It therefore asks the Court for an interpretation of Directive 2003/4, which applied at that time. However, the Netherlands Government and the Commission submit that the interpretation should relate to the provisions of Directive 90/313, which, since it was repealed by Directive 2003/4 only from 14 February 2005, was in force both on the date on which the information whose disclosure is sought was submitted to the competent authorities and on the date on which a request for disclosure of information was first made to those authorities.
32 As a matter of principle, a new rule of law applies from the entry into force of the act of which it forms part. While it does not apply to legal situations which have arisen and become definitive under the old law, it applies to their future effects, as well as to new legal situations (see, to that effect, **Case C-428/08**

Monsanto Technology [2010] ECR I-0000, paragraph 66). It is otherwise – subject to the principle of the non-retroactivity of legal acts – only if the new rule is accompanied by special provisions which specifically lay down its conditions of temporal application.

33 It must be observed, in the present case, that Directive 2003/4, which repeals Directive 90/313, does not contain any special provisions in this respect.

34 Moreover, the right of access to environmental information can crystallise only on the date on which the competent authorities have to take a decision on the request which has been made to them. Only then, as the Advocate General observes in point 28 of her Opinion, do those authorities have to assess, in the light of all the factual and legal circumstances of the case, whether or not the information requested should be supplied.

35 In the present case, since the contested decision was taken after the period for the transposition of Directive 2003/4 had expired, it is in any event by reference to the right of access to environmental information as defined by that directive that the facts at issue in the main proceedings must be assessed, in the absence of any provision to the contrary in that directive, Article 3 of which moreover draws no distinction as regards the kind of information whose disclosure it governs between information which may have been in the possession of the competent authorities before 14 February 2005 or in their possession only after that date.

36 Consequently, the Court must answer the questions referred in the light of Directive 2003/4, as the referring court requests.

Question 1

37 Article 2 of Directive 2003/4 lists the various categories of information that fall within the concept of environmental information which European Union law subjects to the disclosure rules laid down by that directive. The referring court's first question is consequently aimed at determining essentially whether information such as that at issue in the main proceedings falls within one of those categories.

38 The contested decision is a refusal to disclose studies of residues and reports of field trials submitted in connection with a procedure for extending the authorisation of a product within the scope of Directive 91/414. In adopting that directive, the European Union legislature noted inter alia, as stated in the fourth recital in its preamble, that plant protection products can have non-beneficial effects upon plant production, and their use may involve risks and hazards for humans, animals and the environment, especially if they are placed on the market without having been officially tested and authorised and if they are incorrectly used.

39 It is therefore undeniable that the information concerned by the contested decision, relating to residues of a plant protection product on food, forms part of an authorisation procedure whose purpose is precisely to prevent risks and hazards for humans, animals and the environment. On that basis, the information is in itself such as to concern the state of human health and safety, including where relevant the contamination of the food chain, as set out in Article 2(1)(f) of Directive 2003/4.

40 However, in accordance with Article 2(1)(f), information of that kind falls within the scope of Directive 2003/4 only in so far as the state of human health and safety and the contamination of the food chain to which it relates are or may be affected by the state of the elements of the environment referred to in Article 2(1)(a) or, through those elements, by any of the matters referred to in Article 2(1)(b) and (c) of that directive.

41 Article 2(1)(a) of Directive 2003/4 refers to elements of the environment such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements. Article 2(1)(b) refers to factors such as, inter alia, substances, waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in Article 2(1)(a).

42 In the present case, the provision of information on the presence of residues of plant protection products in or on plants such as lettuce, as in the main proceedings, thus aims, by making it possible to verify the level at which the MRL was set, to limit the risk that a component of biological diversity will be affected and the risk that those residues will be dispersed in particular in soil or groundwater. Although such information does not directly involve an assessment of the consequences of those residues for human health, it 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.

43 In those circumstances, the answer to Question 1 is that the term 'environmental information' in Article 2 of Directive 2003/4 must be interpreted as including 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 setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages.

Question 2

44 By its second question, the referring court asks essentially whether Article 14 of Directive 91/414 must be interpreted as being capable of application only in so far as the obligations under Article 4(2) of Directive 2003/4 are not affected.

45 It should be noted, as a preliminary point, that the second paragraph of Article 14 of Directive 91/414 contains a list of documents and information which cannot be treated as confidential. These include, in the fifth indent, 'summar[ies] of the results of the tests to establish the substance's or product's efficacy and harmlessness to humans, animals, plants and the environment'. Consequently, in a situation such as that

at issue in the main proceedings, before determining the scope of the protection of confidentiality sought by Bayer under the first paragraph of Article 14 of Directive 91/414, the competent national authorities must ascertain whether the information and documents concerned are among those listed in the second paragraph of Article 14.

46 To answer the referring court's question, it must be recalled that the conditions of access to environmental information were originally laid down by Directive 90/313, which was repealed by Directive 2003/4 as from 14 February 2005.

47 Article 14 of Directive 91/414 established the principle that applicants for marketing authorisations may request that information submitted by them involving industrial or commercial secrets be treated as confidential, but 'without prejudice to Council Directive 90/313'. Article 3 of the latter directive provided that Member States could refuse access to information relating to the environment if it affected commercial and industrial confidentiality.

48 Directive 90/313 was replaced by Directive 2003/4, Article 4 of which provides for protection of industrial and commercial secrets that is less strict than the protection deriving from Directive 91/414 in conjunction with Directive 90/313, in that it requires that, for a decision to be taken on whether or not to refuse disclosure of environmental information, the interest served by the refusal to disclose must be balanced against the public interest served by disclosure.

49 In this context, it should be noted that with effect from 14 February 2005, by virtue of the express provisions of Article 11 of Directive 2003/4, Article 14 of Directive 91/414 must be read as referring no longer to Directive 90/313 but to Directive 2003/4. In the absence of any contrary provision on the point in Directive 2003/4, full effect must be given to the reference which is now thus made by Article 14 of Directive 91/414 to Directive 2003/4.

50 Article 14 must therefore be read as meaning that it is without prejudice to Directive 2003/4 that the Member States and the Commission must ensure that information supplied by applicants for authorisations to place plant protection products on the market which involves industrial or commercial secrets is treated confidentially if the applicants so request and the Member State or the Commission accepts that their request is warranted.

51 Consequently, in a situation such as that at issue in the main proceedings, it is for the competent authorities of the Member State concerned, when a request has been made to them for confidential treatment of information supplied, to process it in compliance with the conditions laid down in Article 14, provided that that processing does not lead those authorities, where a request for access to that information has also been made to them, to disregarding the obligations which now rest on them pursuant to Directive 2003/4.

52 Those obligations are set out in Article 4 of Directive 2003/4. That article allows Member States to provide that a request for environmental information may, except where the information relates to emissions into the environment, be refused if disclosure of the information would adversely affect the confidentiality of commercial or industrial information where such confidentiality is provided for by national or European Union law. However, the article also requires that such a ground for refusal must be interpreted in a restrictive way, taking into account the public interest served by disclosure, and that in every particular case the public interest served by disclosure must be weighed against the interest served by the refusal.

53 In those circumstances, where a request is made to the competent authorities for access to environmental information that has been supplied by an applicant for an authorisation to place plant protection products on the market, and the request for protection of that information as industrial or commercial secrets within the meaning of Article 14 of Directive 91/414 appears to them to be justified, those authorities are nevertheless obliged to allow the request for access to that information if it relates to emissions into the environment or if, in other cases, the public interest served by disclosure appears to outweigh the interest served by the refusal to disclose.

54 In the light of the above considerations, the answer to Question 2 is that, provided that a situation such as that at issue in the main proceedings is not one of those listed in the second paragraph of Article 14 of Directive 91/414, the first paragraph of Article 14 of that directive must be interpreted as being capable of application only in so far as the obligations under Article 4(2) of Directive 2003/4 are not affected.

Question 3

55 By its third question the referring court asks essentially whether Article 4 of Directive 2003/4 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, or that it can be defined in a general measure adopted by the national legislature.

56 It is apparent from the very wording of Article 4 of Directive 2003/4 that the European Union legislature prescribed that the balancing of the interests involved was to be carried out in every particular case.

57 Neither Article 14 of Directive 91/414 nor any other provision of Directive 2003/4 suggests that the balancing of the interests involved, as prescribed in Article 4 of Directive 2003/4, could be substituted by a measure other than an examination of those interests in each individual case.

58 That does not, however, 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.

59 It follows from the above considerations that the answer to Question 3 is that Article 4 of Directive 2003/4 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.

Costs

60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

1. The term 'environmental information' in Article 2 of 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 must be interpreted as including 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 setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages.

2. Provided that a situation such as that at issue in the main proceedings is not one of those listed in the second paragraph of Article 14 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, the first paragraph of Article 14 of that directive must be interpreted as being capable of application only in so far as the obligations under Article 4(2) of Directive 2003/4 are not affected.

3. Article 4 of Directive 2003/4 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.

OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 23 September 2010 (1)
Case C‑266/09
Stichting Natuur en Milieu
Vereniging Milieudefensie
Vereniging Goede Waar & Co.
v
College voor de toelating van gewasbeschermingsmiddelen en biociden
(Reference for a preliminary ruling from the College van beroep voor het bedrijfsleven (Netherlands))
(Directive 2003/4/EC – Access to environmental information – Environmental information – Directive 91/414/EEC – Plant protection products – Authorisation procedure)

I – Introduction

1. The present proceedings concern access to information regarding residues from a plant protection product on lettuces which was submitted in the authorisation procedure for that product. In particular, it must be clarified whether that information is environmental information within the meaning of 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 (2) ('the Environmental Information Directive') and to what extent Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (3) ('the Plant Protection Directive') affects the application of the Environmental Information Directive.

II – Legislative framework

A – International law

2. The right of access to environmental information is established in the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (4) ('the Aarhus Convention'), which was signed by the Community on 25 June 1998 in Aarhus (Denmark). (5)

3. Article 4(4)(d) of the Convention governs the refusal to disclose environmental information on grounds of industrial and commercial confidentiality:

'A request for environmental information may be refused if the disclosure would adversely affect

…

(d) the confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;

…'

4. The protection of commercial confidentiality is also the subject of Article 39 of the Agreement on Trade-Related Aspects of Intellectual Property Rights in Annex 1C of the Agreement Establishing the World Trade Organisation (WTO), which was signed in Marrakech on 15 April 1994 and was approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) ('the TRIPS Agreement'): (6)

'1. In the course of ensuring effective protection against unfair competition as provided in Article 10bis of the Paris Convention (1967), Members shall protect

undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.
2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices ... so long as such information:
(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;
(b) has commercial value because it is secret; and
(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.
3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.'

B – European Union law

1. The Environmental Information Directive

5. The right of access to environmental information was first laid down in Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (7) ('the old Environmental Information Directive'). That directive was repealed upon the expiry of the implementation period for the new Environmental Information Directive, namely on 14 February 2005. The new directive implements the right of access to information in accordance with the Aarhus Convention.
6. The definitions contained in Article 2 include environmental information:
'For the purposes of this Directive:
1. "Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:
(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);
(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;
(d) reports on the implementation of environmental legislation;
(e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); and
(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).
...'
7. The right of access to environmental information is laid down in Article 3(1):
'Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.'
8. Exceptions are laid down in Article 4. In the present case, Article 4(2)(d), (e) and (g) are of particular interest:
'Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:
...
(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;
(e) intellectual property rights;
...
(g) the interests or protection of any person who supplied the information requested on a voluntary basis without being under, or capable of being put under, a legal obligation to do so, unless that person has consented to the release of the information concerned;
...
The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.
...'

2. The Plant Protection Directive

9. The Plant Protection Directive regulates the authorisation, placing on the market, use and control of plant protection products and the placing on the market and control of their active substances. In particular, plant protection products require authorisation by the Member States. Such authorisation is subject to an impact study.

10. Article 14 governs the protection of information submitted in the authorisation procedure:
'Member States and the Commission shall, without prejudice to Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment, ensure that information submitted by applicants involving industrial and commercial secrets is treated as confidential if the applicant wishing to have an active substance included in Annex I or the applicant for authorisation of a plant protection product so requests, and if the Member State or the Commission accepts that the applicant's request is warranted.
Confidentiality shall not apply to:
– the names and content of the active substance or substances and the name of the plant protection product,
– the name of other substances which are regarded as dangerous under Directives 67/548/EEC and 78/631/EEC,
– physico-chemical data concerning the active substance and plant protection product,
– any ways of rendering the active substance or plant protection product harmless,
– a summary of the results of the tests to establish the substance's or product's efficacy and harmlessness to humans, animals, plants and the environment,
– recommended methods and precautions to reduce handling, storage, transport, fire or other hazards,
– methods of analysis referred to in Articles 4(1)(c) and (d) and 5(1),
– methods of disposal of the product and of its packaging,
– decontamination procedures to be followed in the case of accidental spillage or leakage,
– first aid and medical treatment to be given in the case of injury to persons.
If the applicant subsequently discloses previously confidential information, he shall be required to inform the competent authority accordingly.'
11. The active substance propamocarb has been authorised as a fungicide in the Union since 1 October 2007. (8) The reference for a preliminary ruling concerns measures based on the previously applicable Netherlands national authorisation.

3. The directive on the fixing of maximum residue levels

12. Furthermore, Council Directive 90/642/EEC of 27 November 1990 on the fixing of maximum levels for pesticide residues in and on certain products of plant origin, including fruit and vegetables (9) is relevant to the present case. Under Article 5b(2), the Member States establish their own maximum residue levels in cases where no Union-wide levels have been established.
13. The twelfth recital in the preamble to that directive states:
'Whereas, moreover, observance of the maximum levels will ensure that products can move freely and that the health of consumers and of animals is properly protected'.

C – Netherlands law

14. The Netherlands has implemented the Environmental Information Directive, but those provisions were not applicable in the main proceedings. Instead, the contested decision was based on Article 22(2) of the Netherlands Law on pesticides:
'If a document submitted, in accordance with provisions of this law or provisions enacted under this law to Our Minister concerned or to the College or to another person or institution contains information, or if information can be deduced from such a document, whose confidentiality is justified from the point of view of commercial secrets, Our Minister concerned or the College shall decide, on written request to that end from the person who submitted the document, that the information shall be treated confidentially. Such a request must be provided with reasons.'

III – Main proceedings and questions referred for a preliminary ruling

15. In 1999 the competent Netherlands authorities amended the maximum permissible residue level for the active substance propamocarb on or in lettuce. That level was set at 15 mg/kg. This figure was fixed following a request for extension of the authorisation for the product 'Previcur N'. Bayer CropScience B.V. ('Bayer') is the legal successor to the holder of that authorisation.
16. By letter of 31 January 2005, the appellants in the main proceedings, Stichting Natuur en Milieu, Vereniging Milieudefensie and Vereniging Goede Waar & Co., requested the respondent, the College voor de toelating van bestrijdingsmiddelen (Plant Protection Products and Biocides Approval Board, 'the College'), to disclose to them all the information on which the decision-making relating to the fixing of the aforementioned maximum residue level was based.
17. On the basis of Article 22 of the Netherlands Law on pesticides, the College refused the appellants' request by decision of 8 March 2005. It stated that that provision takes precedence over the rules on access to environmental information.
18. By letter of 14 April 2005, the appellants lodged an objection to that decision. After the College had given Bayer an opportunity to comment, on 22 June 2007 it took the decision contested in the main proceedings, which was corrected on 17 July 2007.
19. By that decision, the College refused access to studies on residues and reports on field trials which had been submitted in the procedure to fix the maximum residue level and, in the view of Bayer, contained commercial secrets.
20. On 6 August 2007, the appellants lodged an appeal against that decision at the referring court.
21. In those proceedings, the College van beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) referred the following questions to the Court:
'1. Must the term 'environmental information' in Article 2 of the Environmental Information Directive 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 setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages?
2. If Question 1 is answered in the affirmative, what is the relationship between Article 14 of the Plant Protection Directive and the Environmental Information Directive in so far as it is relevant to application to information as defined in the previous question, and specifically, is that relationship such that Article 14 of the Plant Protection Directive may be applied only if that does not detract from the obligations laid down in Article 4(2) of the Environmental Information Directive?
3. If it follows from the answers to Questions 1 and 2 above that the defendant is bound in the present case to apply Article 4 of the Environmental Information Directive, does Article 4 of that directive mean that the weighing prescribed in that provision of the general interest served by disclosure against the specific interest served by the refusal to disclose should take place at application level or that it may be effected in national legislation?
22. In addition to the appellant in the main proceedings, Stichting Natuur en Milieu, the intervener in the main proceedings, Bayer CropScience B.V., the Hellenic Republic, the Kingdom of the Netherlands and the European Commission took part in the written procedure. At the hearing on 9 September 2010, Vereniging Milieudefensie, Bayer, the Netherlands, Greece and the Commission presented oral argument.

IV – Legal assessment

A – The applicability ratione temporis of the new Environmental Information Directive

23. It must be clarified, first of all, whether the new or the old Environmental Information Directive is applicable. I will therefore begin by discussing the general principles relating to the applicability ratione temporis of European Union legislation (see section 1) and then examine the reference in Article 14 of the Plant Protection Directive to the old Environmental Information Directive (see section 2).

1. The general principles relating to applicability ratione temporis

24. The referring court raises the question whether the new Environmental Information Directive may be applied to information which, as in the present case, had been submitted to the competent authorities before the expiry of the implementation period.
25. According to settled case-law, procedural rules are generally held to apply to all proceedings pending at the time when they enter into force, whereas substantive rules are usually interpreted as not applying, in principle, to situations existing before their entry into force. (10) As a general rule, the principle of legal certainty precludes a Community measure from taking effect from a point in time before its publication. Further, in order to ensure observance of the principles of legal certainty and the protection of legitimate expectations, the substantive rules of Community law must be interpreted as applying to situations existing before their entry into force only in so far as it clearly follows from their terms, objectives or general scheme that such effect must be given to them. (11)
26. However, new rules apply, as a matter of principle, immediately to the future effects of a situation which arose under the old rule. (12) The principle of legitimate expectations cannot be extended to the point of altogether preventing a new rule from applying to the future effects of situations which arose under the earlier rule. (13)
27. Access to information received by an authority in the past, in accordance with the Environmental Information Directive, is not a matter of procedural law, but falls under substantive law. Information requirements under procedural law serve a different aim, for example to enable a consultation on a detrimental measure, whilst the right of access to environmental information is formally granted irrespective of any other purpose. A retroactive application of the Environmental Information Directive is therefore ruled out in principle.
28. The decision on access to information which has previously been obtained by an authority is a matter of the future effect of a situation which arose previously. Only when the decision on the request for access is taken does the question actually arise whether the information should be disclosed.
29. This particular time-dependence of the right of access is expressly laid down in the first sentence of Article 4(7) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. (14) Under that provision, exceptions to the right of access only apply for the period during which protection is justified on the basis of the content of the document. This must follow from the principle, which also applies to the Environmental Information Directive, that access may be refused in principle only if the adverse effects on an interest protected by law outweigh the public interest served by disclosure of the information. Both the adverse effects and the public interest may change over time and produce a different result of the balancing exercise.
30. The provisions of the Environmental Information Directive accordingly do not show that the time at which the information has reached the authorities is relevant to the application of the right of access. Article 3(1) extends without distinction to all existing information and there are no special provisions for old information. In so far as, where information was submitted before the entry into force of provisions on access to environmental information, there was a legitimate expectation of permanent confidential treatment, that would have to be taken into account not in determining the application of the Environmental Information Directive but in applying the exceptions.
31. The time when the information in question was received by the competent authorities is therefore irrelevant. (15)
32. The Commission and the Netherlands nevertheless take the view that the old Environmental Information

Directive is applicable in the main proceedings since the first request for access was submitted before the expiry of the implementation period for the new directive. (16) The Commission relies on the principle of tempus regit actum. That principle implies that assessment of the legal consequences of a situation is to be determined in accordance with the legal provisions in force at the time of the events in question.(17)

33. Sometimes it may actually be necessary to assess a request on the basis of the law which applied at the time it was made or perhaps even to have regard to earlier events. This may follow from the applicable legislation, possibly in conjunction with the abovementioned principles of legal certainty and the protection of legitimate expectations. (18)

34. In the case of the Environmental Information Directive, however, the event relevant for the application of the rule is the decision on access to the information. This is apparent simply from the fact that the applicant could have submitted a new request at any time after the expiry of the implementation period for the new Environmental Information Directive, without it normally being able to be opposed on the basis of a final decision on an earlier application. (19)

35. In addition, in the present case the request was received only two weeks before the expiry of the implementation period for the new Environmental Information Directive and the first decision was taken after that period had expired. The final administrative decision, which is contested in the main proceedings, was not even adopted until more than two years later. Against this background, reliance on the stricter old Environmental Information Directive appears almost improper.

36. Consequently, in accordance with the general principles relating to the applicability ratione temporis of European Union law, the new Environmental Information Directive is applicable in the main proceedings.

2. The applicability of the new Environmental Information Directive in conjunction with Article 14 of the Plant Protection Directive

37. However, the present case concerns information which was submitted in a procedure for the extension of the authorisation of a plant protection product. Its confidential treatment is the subject of Article 14 of the Plant Protection Directive. That provision expressly applies without prejudice to the old Environmental Information Directive. It must therefore be examined whether that provision refers mandatorily to the old directive (static reference) or whether the new Environmental Information Directive replaced it within the scope of that provision (dynamic reference).

38. An argument which could be cited against applying the new Environmental Information Directive is that when it adopted the Plant Protection Directive the legislature had in view the provisions of the old Environmental Information Directive. With regard to the protection of commercial and industrial confidentiality, a conflict between the Plant Protection Directive and the old Environmental Information Directive would appear to be largely ruled out because the fourth indent of Article 3(2) of the old directive permitted the Member States to refuse access to information where commercial and industrial confidentiality are affected.

39. The new Environmental Information Directive, on the other hand, restricts the protection of commercial and industrial confidentiality. Under Article 4(2)(d), refusal is only possible, firstly, if disclosure of the information would adversely affect the confidentiality of commercial or industrial information protected by law, secondly if the interest in protecting confidentiality outweighs the public interest served by disclosure and, thirdly, if the information does not concern emissions into the environment. It is therefore perfectly conceivable that the new Environmental Information Directive permits access to information which would be treated confidentially under the old directive.

40. Nevertheless, Article 11 of the new Environmental Information Directive repeals the old directive and provides that references to the old directive are to be construed as referring to the new directive. The actual wording of the new Environmental Information Directive therefore precludes the continued application of the old directive in isolation as regards the protection of commercial confidentiality in the field of plant protection.

41. Furthermore, international agreements concluded by the Union prevail over provisions of secondary Community legislation. (20) For that reason, secondary Community legislation is to be interpreted as far as possible consistently with the Union's obligations under international law. (21) However, the provisions of the new Environmental Information Directive on the protection of commercial and industrial confidentiality are consistent with Article 4(4)(d) of the Aarhus Convention, which also applies to plant protection, whilst the provisions of the old Environmental Information Directive would not adequately implement the Convention in this regard.

42. Article 14 of the Plant Protection Directive is therefore to be construed as applying without prejudice to the new Environmental Information Directive, and the reference for a preliminary ruling must be assessed having regard to the new Environmental Information Directive.

B – The first question

43. The first question is intended to clarify whether information submitted within the framework of a national procedure for the extension of the authorisation of a plant protection product with a view to fixing the maximum quantity of a pesticide which may be present in food or beverages constitutes environmental information.

44. The Court has held, even with regard to the old Environmental Information Directive, that the legislature's intention was to make the concept of 'information relating to the environment' 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. (22) The new Environmental Information Directive contains a definition which is wider and more detailed. (23) Neither the old nor the new Environmental Information Directive is 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 an environmental factor. To be covered by the right of access, such information must fall within one or more of the categories set out in the directive. (24) It must therefore be examined whether the contested information can be classified in one of those categories.

45. According to the referring court, the contested studies include, on the one hand, the determination of the acceptable quantity of propamocarb which may be present (at most) on and in lettuces from the viewpoint of good agricultural practice and public health and, on the other, the conclusion that the product Previcur N satisfies that standard when used in accordance with the legislation on use and the statutory directions for use.

46. Bayer argues that the studies and reports largely contain information on field trials with the plant protection product and a statistical evaluation. Those documents therefore show only the quantities of the product which remain on the plants when properly used. On the other hand, the effects of the product as well as potential health risks of the active substance are examined in other studies.

1. Article 2(1)(f) of the Environmental Information Directive – Health-related information

47. Because the information in question is used to fix a maximum residue level, which is (also) intended to protect human health, the parties argue above all whether the information is health-related environmental information which is covered by Article 2(1)(f) of the Environmental Information Directive. Under that provision, environmental information means any information on the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in Article 2(1)(a) or, through those elements, by any of the matters referred to in (b) and (c).

48. This definition is very broad as regards the relevant aspects of human life. However, it only covers information on effects caused by elements of the environment, environmental factors or environment-related measures and activities. The aim is to prevent a large amount of non-environmental information being covered. (25)

49. Information on residues from a plant protection product on foodstuffs evidently relates to the contamination of the food chain and thus also to human health and safety. However, Bayer and the Netherlands dispute that the contested information relates to the transmission of effects through elements of the environment. It is therefore reasonable, before taking a final decision on the application of Article 2(1)(f) of the Environmental Information Directive, first to examine letters (a), (b) and (c) of that provision.

2. Article 2(1)(a) of the Environmental Information Directive – State of the elements of the environment

50. Under Article 2(1)(a) of the Environmental Information Directive, environmental information means any information on the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements.

51. The contested information relates to the state of treated lettuces, namely the residues remaining on those plants from a pesticide where it is properly used. If those plants constitute elements of the environment, the information is environmental information.

52. The list of elements of the environment is not exhaustive, but only illustrative. Conceptually, everything occurring in the environment could be regarded as an element of the environment. The lettuces treated with plant protection products would therefore also be elements of the environment.

53. However, the elements of the environment listed do not describe individual objects or specimens, but rather abstract environmental matrices: air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components. They are structural features of the environment or certain environmental areas.

54. Lettuces as such do not appear on that list, but come under the generic heading of agricultural crops. They are a feature of substantial areas of our environment and should therefore be recognised as an element of the environment. Information on treated lettuces would then concern the state of a part of that element of the environment.

55. It could be argued, however, that agricultural crops are not part of the natural environment, but belong to a production process created by humans. They do not therefore form part of the natural environment, but are to be classified as part of the human environment.

56. An indication that the notion of environment in European Union law includes only natural or semi-natural elements is the expression ‘natural sites’ which is mentioned as one of the elements of the environment in Article 2(1)(a) of the Environmental Information Directive, as well as in various other measures. (26) In particular, Article 2(12) of the Plant Protection Directive does not extend the concept of the environment to agricultural crops but restricts it to wild species of flora and fauna. Correspondingly, only wild animals and plants are specially protected by Union environmental law, (27) whilst agricultural crops come under agricultural law.

57. However, the notion of environment in Union law is not always restricted to the natural environment. For example, the assessment of environment effects includes the effects on population and material assets, including the architectural and archaeological heritage. (28) The Water Framework Directive also provides for

environmental quality standards for artificial bodies of water. (29) And finally, as the Commission submits, the old Environmental Information Directive regarded information on the state of fauna and flora as environmental information, regardless of whether this concerned the natural fauna and flora environment.

58. Thus any restriction of the concept of the environment to the natural environment is not an expression of a general principle but follows from the specific normative purpose of the definition. The Environmental Information Directive contains no indication of such a restricted purpose. On the contrary, it may be presumed that the new directive was not intended to restrict the concept of environmental information as against the old directive. (30) The mention of natural sites in the merely illustrative list of elements of the environment should not therefore be given a strict interpretation. Indeed, the other examples are not qualified by the term 'natural'.

59. It would also not really make sense in practice to draw a distinction between the natural and artificial environment, since there are hardly any areas left in Europe which are not, to a greater or lesser extent, influenced by humans. Thus, information on commercial forests, for example on forest die-back, would not constitute environmental information according to this logic.

60. As far as agricultural crops are concerned, they should be classified as part of the environment at least where they interact with the natural elements of the environment. This is the case with the outdoor cultivation of lettuces, since they come into contact with the soil and wild animals in particular, but may also affect waters, especially ground water.

61. The contested information on residues on lettuces is therefore environmental information in the form of information on elements of the environment in accordance with Article 2(1)(a) of the Environmental Information Directive.

3. Article 2(1)(b) of the Environmental Information Directive – Information on environmental factors

62. Consideration must also be given to Article 2(1)(b) of the Environmental Information Directive. This category covers information on factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a).

63. Stichting Natuur en Milieu and, it would appear, the Commission argue that the studies and reports contained information on factors affecting or likely to affect elements of the environment.

64. This is correct, since the active substance propamocarb and the plant protection product Previcur N are substances which, when released in accordance with the instructions, affect elements of the environment. Those effects relate not only to the lettuces treated, but also to other elements of the environment, in particular plants, animals and fungi, but also water, the soil and the ambient air.

65. Even if, contrary to my view, agricultural crops were not regarded as elements of the environment, the information would still be information on environmental factors. Information on residues on lettuces is also information on releases affecting the elements of the environment. The residues themselves may affect elements of the environment if, for example, they are absorbed by wild animals.

66. The contested information on the treatment of lettuces is therefore also environmental information in the form of information on environmental factors within the meaning of Article 2(1)(b) of the Environmental Information Directive.

4. Article 2(1)(c) of the Environmental Information Directive – Information on administrative measures

67. The information could also be environmental information within the meaning of Article 2(1)(c) of the Environmental Information Directive. This category covers information on measures (including administrative measures) such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in Article 2(1)(a) and (b), as well as measures or activities designed to protect those elements.

68. However, information on administrative measures which are not intended to protect the environment is not environmental information. (31) There could be doubts as to the existence of environmental information within the meaning of Article 2(1)(c) of the Environmental Information Directive because the studies and reports were used to fix a maximum residue level. Bayer and the Netherlands claim that this primarily serves consumer protection and the marketability of the goods in question, and not, first and foremost, environmental protection. This view is confirmed by the twelfth recital in the preamble to Directive 90/642 and recital 2 in the preamble to Regulation No 396/2005, (32) which is not applicable ratione temporis.

69. However, Greece rightly pointed out in the written procedure that, according to the order for reference, the information in question was submitted in the procedure for the extension of the authorisation of a plant protection product. In addition, the Commission points out that such studies must be submitted in the authorisation procedure in accordance with Article 13(1)(b) and Annex II, part A, point 6.3 of the Plant Protection Directive. It must therefore be assumed that the studies and reports are not only important for the fixing of the maximum residue level, but also form part of the basis for any authorisation. The decision on the authorisation of plant protection products is an administrative measure within the meaning of Article 2(1)(c) of the Environmental Information Directive which may affect the state of the elements of the environment.

70. In order to be able fully to assess this measure, it is reasonable in principle to regard all information relating to the procedure as environmental information. In practice, it would often be possible to assess whether

the information in question is important in terms of the environment only on the basis of the relevant context. The studies contested in the present case might, for example, provide clarification on whether or under what conditions especially high residue levels which may be important not only for consumer protection but also for the environment may be present on the crops when the product is used.

71. Information which is submitted in the authorisation procedure is therefore information on that administrative measure, that is to say also environmental information within the meaning of Article 2(1)(c) of the Environmental Information Directive. (33)

5. Conclusion

72. On the basis of the considerations put forward on Article 2(1)(a), (b) and (c) of the Environmental Information Directive, the contested studies and reports are also environmental information in the form of information on the contamination of the food chain within the meaning of Article 2(1)(f) of the Environmental Information Directive.

73. In summary, the term 'environmental information' in Article 2 of the Environmental Information Directive 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.

C – The second question – The relationship between the Environmental Information Directive and Article 14 of the Plant Protection Directive

74. By the second question, the referring court seeks to ascertain what is the relationship between the Environmental Information Directive and Article 14 of the Plant Protection Directive and specifically whether Article 14 of the Plant Protection Directive may be applied only if such application does not detract from the obligations laid down in Article 4(2) of the Environmental Information Directive.

75. Although the fixing of maximum residue levels is subject to specific rules of European Union law – at the time of the Netherlands decision on propamocarb Article 5b(2) of Directive 90/642 – which do not make any provision regarding the treatment of industrial and commercial secrets, Article 14 of the Plant Protection Directive is applicable in principle because the contested information was submitted within the framework of a procedure for the authorisation of a plant protection product.

1. The application of Article 4(2)(d) of the Environmental Information Directive in the light of Article 14 of the Plant Protection Directive

76. Because Article 14 of the Plant Protection Directive applies without prejudice to the Environmental Information Directive, a request for environmental information which was submitted in a procedure for the authorisation of plant protection products must in principle be assessed on the basis of the Environmental Information Directive. (34) If they wish to refuse access to environmental information, the competent authorities must therefore examine, first of all, in particular whether disclosure of the information would adversely affect the confidentiality of commercial or industrial information protected by law and whether the information concerns emissions into the environment and, if necessary, conclude by weighing the public interest served by disclosure against the interest in refusing disclosure.

77. The legal protection of commercial and industrial secrets has already been recognised as a general principle in competition law and in public procurement, (35) and even as part of the fundamental right to respect for private life; (36) it is also an international-law obligation entered into by the Union under Article 39 of the TRIPS Agreement and, in the present case, also follows from the Plant Protection Directive and from Netherlands law.

78. Article 14 of the Plant Protection Directive is helpful in identifying the confidential information to be protected. First, that provision mentions a variety of information which is not covered by industrial and commercial confidentiality. (37) The present case is not concerned by this, however. Secondly, Article 14 of the Plant Protection Directive provides for a procedure in which the competent authorities, together with affected undertakings, determine what information that has been submitted contains industrial and commercial secrets. Confidential treatment requires a request which the authorities must have accepted as warranted.

79. Bayer and the Netherlands take the view that the decision by the competent authorities on the recognition of secrets provided for in Article 14 of the Plant Protection Directive must have an effect on the decision on a request for access under the Environmental Information Directive. Bayer argues in this connection that the authorities would weigh the interests sufficiently when the undertaking makes the request. This effectively means that the protection of commercial and industrial confidentiality would have to be assessed solely on the basis of Article 14 of the Plant Protection Directive.

80. I am not entirely convinced by this view. There is much to suggest that the assessment whether commercial and industrial secrets deserve protection should be based on Article 14 of the Plant Protection Directive, but this cannot preclude the application of the additional elements of the Environmental Information Directive. Specifically:

81. Where the procedure laid down in Article 14 of the Plant Protection Directive is properly implemented, it must be assumed in principle that the information whose disclosure would adversely affect confidentiality of commercial and industrial information is identified. The protection of those interests as a fundamental right must be taken into account in particular, but so must the permitted restriction of that right on the basis of other superior interests, especially by the provisions on access to environmental information.

82. A proper decision under Article 14 of the Plant Protection Directive accordingly requires not only the wording of that provision to be taken into consideration, but also the requirements of the Environmental Information Directive. Thus, the fourth sentence of Article 4(2) of the Environmental Information Directive prohibits information on emissions into the environment being classified as commercial or industrial secrets to be treated confidentially. The competent authorities may not therefore accept a request for the confidential treatment of such information.
83. However, even on a proper application of Article 14 of the Plant Protection Directive it cannot be ruled out that the information no longer deserves protection when the decision on a request for access is taken. (38) In that case, confidentiality would no longer be justified and the decision under Article 14 of the Plant Protection Directive could no longer be imposed on the applicant.
84. It could also be possible that the request for access to environmental information relates to additional public interests in the disclosure of information which the competent authority did not take into consideration in the original decision on the protection of confidentiality. The decision under Article 14 of the Plant Protection Directive would then not have definitively balanced the protection of confidentiality against the public interest served by disclosure. Rather, the balancing would have to be carried out again.
85. A properly taken decision under Article 14 of the Plant Protection Directive on the protection of confidential commercial and industrial information is therefore relevant to the decision on the disclosure of environmental information pursuant to Article 4(2)(d) of the Environmental Information Directive (only) subject to possible new developments and additional information on the public interest served by disclosure.

2. Information on emissions into the environment

86. Under the fourth sentence of Article 4(2) of the Environmental Information Directive, the disclosure of environmental information may not be refused on grounds of the confidentiality of commercial or industrial information where the request relates to information on emissions into the environment. Whilst the order for reference does not include a question on the definition of such information, this is manifestly of central importance to the main proceedings and is therefore also addressed by the parties.
87. The Implementation Guide for the Aarhus Convention (39) refers, as regards the notion of emissions, to the definition contained in the IPPC directive. (40) Under Article 2(5) of that directive, emission means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land. The Netherlands and the Commission therefore suggest restricting the notion of emissions to emissions from installations in accordance with the IPPC directive, with the result that the release of plant production products in the context of farming would not be emissions.
88. In principle, the Implementation Guide is a suitable aid for interpreting imprecise legal concepts in the Environmental Information Directive. (41) It cannot give a binding interpretation of the Aarhus Convention, but it was at least drafted with the knowledge and support of the parties to the Convention. (42) It must also be assumed that the legislature was aware of the Guide when it adopted the Environmental Information Directive.
89. It is doubtful, however, whether by reference to the IPPC directive the Guide intended to restrict the definition of emissions to installations. The notion of installation is used in that definition of emissions only because the IPPC directive relates to installations. On the other hand, such a restriction of the definition of emissions cannot be found either in the Environmental Information Directive or in the Aarhus Convention.
90. On the contrary, under Article 4(4)(d) of the Aarhus Convention, information on emissions which is relevant for the protection of the environment is to be disclosed. Yet the question whether emissions originate from installations is immaterial to whether they are relevant for the protection of the environment. One need only think of transport emissions.
91. Aside from the restriction to installations, the definition of emissions under the IPPC directive is perfectly reasonable, however. Consequently, it can be adopted without the reference to installations for the application of the Environmental Information Directive. The fourth sentence of Article 4(2) of the Environmental Information Directive therefore concerns information on the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources into the air, water or land.
92. So understood, the concept of emissions also largely corresponds to the definition in Article 2(8) of Directive 2004/35 on environmental liability with regard to the prevention and remedying of environmental damage, (43) which the Vereniging Milieudefensie emphasises. Under that definition, emissions are to be understood as the release in the environment, as a result of human activities, of substances, preparations, organisms or micro-organisms. That directive, which was not yet in existence when the Implementation Guide was drawn up, corresponds in scope more to the Environmental Information Directive than to the IPPC directive, as it is not limited to installations.
93. However, even under this definition, information on emissions does not extend to information on substances which are released at any time. As the Commission rightly argues, any substance is generally released into the environment at some time during its life cycle. What is concerned is, rather, information on the release as such.
94. As far as can be seen, the present case concerns information on the release of substances as such only incidentally. It must be assumed that the field trial reports indicate what quantities of the plant protection

product were applied. However, they are primarily of interest because of the information on the residues left on the lettuces, which are specific consequences of the release.

95. Such consequences are the precise reason why information on emissions into the environment is generally disclosed. The public has an increased interest in finding out how they may be affected by an emission. Before the emission, effects on humans and the environment were rather unlikely or at least restricted to the sphere of the possessor of the commercial secrets. Released substances, on the other hand, necessarily interact with the environment and perhaps also with humans. The Implementation Guide for the Aarhus Convention therefore emphasises that the protection of commercial confidentiality should end when the substances to which the confidential information relates are released. Possible environmental effects are not to be construed as commercial secrets. (44) This situation of interests is justification in particular for overriding the fundamental right of protection of commercial secrets in relation to information on emissions without a balancing exercise in the individual case. Article 39(3) of the TRIPS Agreement also permits disclosure of such information where it is necessary to protect the public.

96. Consequently, information on residues from emissions into the environment should also be regarded as part of the information on emissions within the meaning of the Aarhus Convention.

97. This holds all the more for the provision on emissions in the Environmental Information Directive, which is much more generous than the provision on emissions in the Aarhus Convention.

98. Article 4(4)(d) of the Convention merely provides that the confidentiality of commercial and industrial information should not preclude the disclosure of information on emissions which is relevant for the protection of the environment. The reference to such relevance could be construed as a restriction of the provision on emissions. (45)

99. On the other hand, the fourth sentence of Article 4(2) of the Environmental Information Directive does not include the wording on relevance for the protection of the environment and extends the scope of the provision on emissions to include other reasons for confidentiality.

100. This scope was extended as a result of heated debates in the course of the legislative procedure. In its original proposal, the Commission did not require relevance for the protection of the environment, but only excluded the application of commercial or industrial secrets in the case of information on emissions. (46) On the other hand, the Council's common position returned to the wording of the Convention. (47) By contrast, the Parliament actually demanded that information on emissions into the environment never be treated confidentially. (48) Only in the Conciliation Committee was the current provision finally agreed, excluding the application of most of the reasons for confidentiality to information on emissions into the environment and not including relevance for the protection of the environment. The extension of the provision on emissions can thus be traced back to a deliberate decision by the legislature.

101. On these grounds, the contested studies and field trial reports are information on emissions into the environment whose disclosure may not be refused on grounds of commercial or industrial confidentiality.

D – The third question – Weighing of interests by the legislature

102. By its third question, the referring court is seeking to ascertain whether the weighing prescribed in the third sentence of Article 4(2) of the Environmental Information Directive of the general interest served by disclosure against the specific interest served by the refusal to disclose should take place at application level or whether it may be effected at the level of national legislation.

103. Under that provision, in every particular case the public interest served by disclosure is to be weighed against the interest served by the refusal.

104. Bayer stresses that the Aarhus Convention does not require any weighing of interests in a particular case. Similarly, Finland also issued a statement when the directive was adopted to the effect that comparisons of interests in individual cases could lead to indiscriminate restriction of access. (49)

105. As Greece and the Commission argue, however, it is incompatible with the wording of Article 4(2) of the Environmental Information Directive to replace the weighing of interests in the particular case by a general weighing by the national legislature. In addition, contrary to the statement made by Finland, this does not constitute a restriction of access compared with the Aarhus Convention, because such weighing makes it possible, despite interests protected by law being adversely affected, to disclose information where the public interest served by disclosure prevails.

106. In the view of the Netherlands and Bayer, such weighing is already carried out with the application of Article 14 of the Plant Protection Directive. The recognition of commercial and industrial secrets requires such weighing. The limits imposed by that provision and the national implementation of the weighing serve the purpose of legal certainty and are therefore necessary.

107. As has already been explained, however, such weighing under Article 14 of the Plant Protection Directive may be incomplete. It cannot therefore fully replace the weighing under the third sentence of Article 4(2) of the Environmental Information Directive.

108. The third sentence of Article 4(2) of the Environmental Information Directive accordingly means that the weighing prescribed in that provision of the general interest served by disclosure against the specific interest served by the refusal to disclose should take place at application level in every particular case.

V – Conclusion

109. I therefore propose that the Court answer the questions referred for a preliminary ruling as follows:

1. The term ‘environmental information’ in Article 2 of Directive 2003/4/EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC 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.
2. Subject to possible new developments and additional information on the public interest served by disclosure, a properly taken decision under Article 14 of Council Directive 91/414/EEC concerning the placing of plant protection products on the market on the protection of confidential commercial and industrial information is relevant to the decision on the disclosure of environmental information pursuant to Article 4(2)(d) of Directive 2003/4. However, the contested studies and field trial reports are information on emissions into the environment whose disclosure may not be refused on grounds of commercial or industrial confidentiality.
3. The third sentence of Article 4(2) of Directive 2003/4 means that the weighing prescribed in that provision of the general interest served by disclosure against the specific interest served by the refusal to disclose should take place at application level in every particular case.

---

1 – Original language: German.
2 – OJ 1990 L 41, p. 26.
3 – OJ 1991 L 230, p. 1; the annexes to the directive are frequently supplemented, but the relevant provisions remain unaffected by amendments.
4 – OJ 2005 L 124, p. 4.
5 – Approved by Council Decision 2005/370/EC of 17 February 2005, OJ 2005 L 124, p. 1.
6 – OJ 1994 L 336, p. 1.
7 – OJ 1990 L 158, p. 56.
8 – Point 160 of Annex I to the Plant Protection Directive, added by Commission Directive 2007/25/EC of 23 April 2007, OJ 2007 L 106, p. 34.
9 – OJ 1990 L 350, p. 71, as amended by Commission Directive 98/82/EC of 27 October 1998 (OJ 1998 L 290, p. 25).
10 – Joined Cases 212/80 to 217/80 Meridionale Industria Salumi and Others [1981] ECR 2735, paragraph 9; Case C‑201/04 Molenbergnatie [2006] ECR I-2049, paragraph 31; and Case C‑450/06 Varec [2008] ECR I-581, paragraph 27.
11 – Joined Cases C‑74/00 P and C‑75/00 P Falck and Acciaierie di Bolzano v Commission [2002] ECR I-7869, paragraph 119 and the case-law cited.
12 – Case 68/69 Brock [1970] ECR 171, paragraph 7; Case 143/73 SOPAD [1973] ECR 1433, paragraph 8; Case 270/84 Licata v ESC [1986] ECR 2305, paragraph 31; Case C‑122/96 Saldanha and MTS [1997] ECR I-5325, paragraph 14; Case C‑162/00 Pokrzeptowicz-Meyer [2002] ECR I-1049, paragraph 50; Case C‑334/07 P Commission v Freistaat Sachsen [2008] ECR I-9465, paragraph 43; and Case C‑428/08 Monsanto Technology [2010] ECR I-0000, paragraph 66.
13 – Case 84/78 Tomadini [1979] ECR 1801, paragraph 21; Case 278/84 Germany v Commission [1987] ECR 1, paragraph 36; Case 203/86 Spain v Council [1988] ECR 4563, paragraph 19; Case C‑60/98 Butterfly Music [1999] ECR I-3939, paragraph 25; Case C‑162/00 Pokrzeptowicz-Meyer, cited in footnote 12, paragraph 55; and Case C‑334/07 P Commission v Freistaat Sachsen, cited in footnote 12, paragraph 43.
14 – Regulation of the European Parliament and of the Council of 30 May 2001, OJ 2001 L 145, p. 43.
15 – The judgments in Joined Cases C-174/98 P and C-189/98 P Netherlands and van der Wal v Commission [2000] ECR I-1 and Case C-139/07 P Commission v Technische Glaswerke Ilmenau [2010] ECR I-1000 also concerned documents which came into the Commission’s possession before the entry into force of the access provisions that were applied.
16 – The Opinion of Advocate General Sharpston in Case C-552/07 Azelvandre [2009] ECR I-987, point 6 et seq., is also to that effect. The Court left the question open in its judgment, paragraph 52 et seq.
17 – Opinion of Advocate General Trstenjak in Case-62/06 ZF Zefeser [2007] ECR I‑11995, footnote 8.
18 – See Falck and Acciaierie di Bolzano v Commission, cited in footnote 11, paragraph 115 et seq.
19 – See, with regard to Regulation No 1049/2001, Case C‑362/08 P Internationaler Hilfsfonds v Commission [2010] ECR I-0000, paragraph 56 et seq., and the Opinion of Advocate General Mengozzi in that case, point 136 et seq.
20 – Case C‑61/94 Commission v Germany [1996] ECR I-3989, paragraph 52; Case C‑286/02 Bellio F.lli [2004] ECR I-3465, paragraph 33; and Case C-344/04 IATA and ELFAA [2006] ECR I‑403, paragraph 35.
21 – Case C‑61/94 Commission v Germany, cited in footnote 20, paragraph 52; Case C‑341/95 Bettati [1998] ECR I-4355, paragraph 20; Case C‑286/02 Bellio F.lli, cited in footnote 20, paragraph 33; Case C‑306/05 SGAE [2006] ECR I-11519, paragraph 35; and Case C‑161/08 Internationaal Verhuis- en Transportbedrijf Jan de Lely [2009] ECR I-4075, paragraph 38.
22 – Case C‑321/96 Mecklenburg [1998] ECR I-3809, paragraph 19, and Case C‑316/01 Glawischnig [2003] ECR I-5995, paragraph 24.
23 – Glawischnig, cited in footnote 22, paragraph 5.
24 – See Glawischnig, cited in footnote 22, paragraph 25.
25 – Stec/Casey-Lefkowitz/Jendroska, The Aarhus Convention: An Implementation Guide, New York 2000, p. 38 et seq. (p. 47 et seq. of the French version).

26 – Defined in Article 1(c) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7); see also the definition of environmental damage in Article 2(1) of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56).

27 – In addition to Directive 92/43, cited in footnote 26, see Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

28 – Annex IV, point 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ 2009 L 140, p. 114).

29 – Article 4(1)(a)(iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1), as amended by Directive 2009/31, cited in footnote 28.

30 – See Glawischnig, cited in footnote 22, paragraph 5.

31 – Glawischnig, cited in footnote 22, paragraph 29 et seq.

32 – Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ 2005 L 70, p. 10).

33 – See Mecklenburg, cited in footnote 22, paragraph 21.

34 – On the meaning of 'without prejudice', see my Opinion in Case C-275/06 Promusicae [2008] ECR I-271, point 47, impliedly confirmed by the judgment in that case, paragraph 42 et seq., and recital 11 in the preamble to Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8)

35 – Case 53/85 AKZO Chemie v Commission [1986] ECR 1965, paragraph 28; Case C‑36/92 P SEP v Commission [1994] ECR I-1911, paragraph 37; and Varec, cited in footnote 10, paragraph 49.

36 – Varec, cited in footnote 10, paragraph 48.

37 – In that respect this provision resembles the provision of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1) interpreted in Azelvandre, cited in footnote 16, paragraph 52.

38 – See above, point 27 et seq.

39 – Stec and Others, cited in footnote 25, p. 60 (p. 76 of the French version).

40 – Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), now replaced by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (Codified version) (OJ 2008 L 24, p. 8).

41 – This is clearly also assumed by Advocate General Sharpston in her Opinion in Case C-263/08 Djurgården-LillaVärtans Miljöskyddsförening [2009] ECR I-9967, footnotes 17, 18 and 32.

42 – See the reports on the first meeting of the Signatories to the Aarhus Convention in Chisinau, Moldova from 19 to 21 April 1999 (CEP/WG.5/1999/2, paragraph 40) and on the second meeting in Dubrovnik, Croatia from 3 to 5 July 2000 (CEP/WG.5/2000/2, paragraph 43).

43 – Cited in footnote 26.

44 – Stec and Others, cited in footnote 25, p. 60 (p. 76 of the French version).

45 – But see Stec and Others, cited in footnote 25, p. 60 (p. 76 of the French version).

46 – Article 4(2)(d) of the Commission proposal, COM(2000) 402 fin., p. 25.

47 – Common position of 28 January 2002 (Council document 11878/1/01 REV 1, p. 12).

48 – See Amendment 21 tabled by the Parliament on 14 March 2001 (OJ 2001 C 343 p. 165 (172)) and Amendment 33 tabled on 30 May 2002 (Council document 9445/02, p. 12).

49 – Council document 14917/02 ADD 1 REV 1, 13 December 2002.