



Court of Justice of the European Union

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Judgments in Cases C-673/13 P Commission v Stichting Greenpeace Nederland and PAN Europe and C-442/14 Bayer CropScience and Stichting De Bijenstichting v College voor de toelating van gewasbeschermingsmiddelen en biociden

Press and Information

When a person requests access to environmental documents, the concept of ‘information on emissions into the environment’ covers, inter alia, information concerning the nature and effects of the release of a pesticide into air, water or soil, or onto plants

The confidentiality of commercial and industrial information may not be invoked to preclude the disclosure of such information

The Court of Justice has heard two cases which, although different in terms of the facts, address, in essence, the right of access to environmental documents.

In Case C-673/13 P, the associations Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe) submitted a request to the Commission, on the basis of an EU regulation,¹ for access to a number of documents relating to the initial marketing authorisation for glyphosate, one of the most widely used herbicides in the world for agricultural weeding and the maintenance of urban and industrial areas. The Commission granted access to those documents, with the exception of part of the draft assessment report prepared by Germany. The Commission justified its refusal stating that the document in question contained confidential information on the intellectual property rights of the applicants for the glyphosate authorisation, that is to say, inter alia, the detailed chemical composition of that substance, its manufacturing process, and the impurities and composition of the finished products.

The two associations brought an action before the General Court of the European Union for annulment of the Commission’s decision. The General Court upheld that action by judgment of 8 October 2013.² The General Court considered that certain parts of the document at issue contained information relating to emissions into the environment.³ Consequently, the Commission was not entitled to invoke the confidentiality of commercial and industrial information and should have granted the associations access to those parts. The Commission was not satisfied with the judgment and asked the Court of Justice to set it aside.

In Case C-442/14, Bijenstichting, a Dutch bee-protection association, submitted a request to the Netherlands authority responsible for authorising the marketing of plant protection products and biocidal products (the College voor de toelating van gewasbeschermingsmiddelen en biociden, CTB) for disclosure of 84 documents concerning marketing authorisations issued by that authority for certain plant protection products and biocides. Bayer, a company holding a large number of these authorisations, objected to that disclosure, on the ground that it would infringe copyright and adversely affect the confidentiality of commercial or industrial information.

¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13).

² Case (T-545/11). *Stichting Greenpeace Nederland and PAN Europe v Commission*.

³ This concerns those parts of the document containing: (1) information on the identity and quantity of the impurities in glyphosate, (2) data concerning the impurities present in the various batches (including the minimum, median and maximum quantities of each impurity) and (3) information on the composition of the plant protection products developed by the various operators concerned

In 2013 the CTB authorised the disclosure of 35 of the 84 documents requested, on the ground that they contained information on emissions into the environment,⁴ even though such disclosure could have an adverse effect on the confidentiality of commercial or industrial information. Under an EU directive,⁵ commercial and industrial confidentiality may not be invoked to preclude the disclosure of such information.

Bijenstichting and Bayer both appealed against the CTB's decision before the Netherlands courts. Those courts referred a number of questions to the Court of Justice for a preliminary ruling regarding, inter alia, whether the information requested by Bijenstichting falls within the concept of 'information on emissions into the environment' within the meaning of the directive, with the result that it should be disclosed without Bayer being entitled to object on the ground that such disclosure could adversely affect the confidentiality of commercial or industrial information.

In two judgments delivered today, the Court clarifies what must be understood by 'emissions into the environment' and 'information on [or which relates to] emissions into the environment' ⁶ within the meaning of the regulation applicable in Case C-673/13 P and the directive applicable in Case C-442/14.

In both judgments, the Court finds, first, that the concept of 'emissions into the environment' includes the release into the environment of products or substances, such as plant protection products or biocides or active substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use of the product or substance.

Therefore, in particular, that concept is **indistinguishable from the concepts of 'release' and 'discharge' and cannot be restricted to emissions emanating from industrial installations** (such as factories and power stations) but also covers **emissions resulting from the spraying of a product, such as a plant protection product or biocide, into the air or its use on plants, in water or on soil.** Such limitations would be at odds with the objective of the regulation and directive of disclosing environmental information as widely as possible.

The Court also confirms that the regulation and directive cover not only information relating to actual emissions, that is to say emissions which are actually released into the environment when a plant protection product or biocide is used on plants or in soil, but also information on foreseeable emissions from that product into the environment. However, the Court states that the concept of information on emissions into the environment **does not include** information relating to **purely hypothetical emissions**, such as, for example, **data from tests to study the effects of the use of a dose of a product which is significantly above the maximum dose for which the marketing authorisation was granted and which is used in practice.**

Furthermore, the Court states that the concept of 'information on emissions into the environment' must be interpreted as covering not only **information on emissions as such** (that is to say information relating to the nature, composition, quantity, date and place of those emissions) but also **information enabling the public to check whether the assessment of actual or foreseeable emissions, on the basis of which the competent authority authorised the product or substance in question, is correct, as well as the data relating to the medium or long-term effects of those emissions on the environment.** In particular, that concept covers information relating to the residues in the environment after the product in question has been used and studies on the measurement of the substance's drift during that use, whether those data come from studies performed entirely or in part in the field, from laboratory studies or translocation studies.

⁴ Those documents included, inter alia, laboratory studies concerning the effects of the active substance imidacloprid on bees and studies performed partly in the field measuring the residues of plant protection products and biocides and their active ingredients present after use of those products in the air or soil, in seeds, leaves, pollen or nectar of the treated plant, as well as in honey and on bees.

⁵ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

⁶ The terms 'relates to' in Regulation No 1367/2006 and 'on' in Directive 2003/4 are equivalent.

In Case C-673/13 P, the Court nonetheless sets aside the judgment of the General Court, in so far as that court considered that it is sufficient that information relates 'in a sufficiently direct manner' to emissions into the environment in order for it to fall within the scope of the regulation. The Court points out that that **regulation concerns information** which 'relates to emissions into the environment', that is to say information which concerns or is relevant to such emissions and not **information containing any link at all, direct or indirect, to emissions into the environment.** The Court of Justice therefore refers the case back to the General Court so that it may determine whether the information at issue does in fact relate to emissions into the environment and, if necessary, rule on the parties' arguments which were not examined in its judgment.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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

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The full texts [C-673/13](#) and [C-442/14](#) of the judgments are published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106