



Reports of Cases

JUDGMENT OF THE GENERAL COURT (Second Chamber)

8 October 2013*

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the first authorisation of the placing on the market of the active substance ‘glyphosate’ — Partial refusal of access — Risk of an adverse effect on the commercial interests of a natural or legal person — Article 4(5) of Regulation No 1049/2001 — Overriding public interest — Regulation (EC) No 1367/2006 — Article 6(1) of Regulation No 1367/2006 — Directive 91/414/EEC)

In Case T-545/11,

Stichting Greenpeace Nederland, established in Amsterdam (Netherlands),

Pesticide Action Network Europe (PAN Europe), established in Brussels (Belgium),

represented by B. Kloostra and A. van den Biesen, lawyers,

applicants,

v

European Commission, represented initially by P. Oliver, P. Ondrůšek and C. ten Dam, and subsequently by P. Oliver, P. Ondrůšek and C. Zadra, acting as Agents,

defendant,

APPLICATION for annulment of the Commission’s decision of 10 August 2011 refusing access to volume 4 of the Draft Assessment Report issued by the Federal Republic of Germany as rapporteur Member State for the active substance glyphosate under 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),

THE GENERAL COURT (Second Chamber),

composed of N.J. Forwood, President, F. Dehousse and J. Schwarcz (Rapporteur), Judges,

Registrar: N. Rosner, Administrator,

having regard to the written procedure and further to the hearing on 26 February 2013,

gives the following

* Language of the case: English.

Judgment

Background to the dispute

- 1 On 20 December 2010, the applicants, Stichting Greenpeace Nederland and Pesticide Action Network Europe (PAN Europe), requested access to several documents relating to the first authorisation of the placing of glyphosate on the market as an active substance, granted under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1). The request was based on Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), and on 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 The following documents were requested:
 - a copy of the draft assessment report issued by the rapporteur Member State, the Federal Republic of Germany, prior to the first inclusion of glyphosate in Annex I to Directive 91/414 ('the draft report');
 - a complete list of all tests submitted by the operators seeking the inclusion of glyphosate in Annex I to Directive 91/414, which was decided by Commission Directive 2001/99/EC of 20 November 2001 amending Annex I to Directive 91/414 to include, inter alia, glyphosate (OJ 2001 L 304, p. 14);
 - the full, complete and original test documents supplied by the operators seeking the inclusion of glyphosate in Annex I to Directive 91/414 in 2001, in so far as concerns all long-term toxicity tests, all mutagenicity tests, carcinogenicity tests, neurotoxicity tests and all reproduction studies.
- 3 By letter of 20 January 2011 the Commission invited the applicants to contact the German authorities in order to obtain access to the documents requested.
- 4 By letter of 7 February 2011, the applicants submitted, pursuant to Article 7(2) of Regulation No 1049/2001, a confirmatory application for access to the documents.
- 5 After seeking the prior agreement of the German authorities, in accordance with Article 4(5) of Regulation No 1049/2001, the Secretary General of the Commission, by letter of 6 May 2011, granted access to the draft report, with the exception of volume 4 thereof ('the document at issue'), which the German authorities refused to disclose and which includes the complete list of all tests submitted by the operators seeking the first inclusion of glyphosate in Annex I to Directive 91/414. The Secretary General informed the applicants that the Commission did not have in its possession the full, complete and original test documents, which had never been transmitted to it. She also explained that the consultation with the German authorities regarding the disclosure of the document at issue was still ongoing and that a decision would be taken in due course.
- 6 By decision of 10 August 2011, the Secretary General of the Commission refused access to the document at issue, relying on the Federal Republic of Germany's refusal ('the contested decision').
- 7 In the contested decision, the Secretary General of the Commission stated the reasons why the Federal Republic of Germany opposed disclosure of the document at issue on the basis of the exception in Article 4(2), first indent, of Regulation No 1049/2001, namely the protection of the commercial

interests of a natural or legal person. The Federal Republic of Germany was of the opinion that the document at issue contained confidential information relating to the intellectual property rights of the operators which had sought the inclusion of glyphosate in Annex I to Directive 91/414, namely the detailed chemical composition of the active substance produced by each of them, detailed information concerning the process by which each of them produced the substance, information on the impurities, the composition of the finished products and the contractual relations between the various operators which had sought the inclusion of glyphosate.

- 8 After noting that the German authorities had declared that they did not consider there to be an overriding public interest, as provided for in Article 4(2) of Regulation No 1049/2001, justifying the disclosure of the document at issue, the Secretary General examined whether, in the light of Regulation No 1367/2006, such an overriding public interest could be invoked. She pointed out that Article 6(1) of Regulation No 1367/2006 was not applicable to the document at issue, since that document did not contain information which could be regarded as relating to emissions into the environment.
- 9 According to the Secretary General, the Commission considered that the information in question concerned the glyphosate production process of the operators which had sought the inclusion of glyphosate in Annex I to Directive 91/414 and that, on balance, the need to protect the intellectual property rights of those operators outweighed the public interest in disclosure of the information. In the Commission's view, disclosure of the information contained in the document at issue would allow competing undertakings to copy the production method followed by the operators which had sought the inclusion of glyphosate, which would lead to considerable loss for those operators and leave their commercial interests and intellectual property rights unprotected. The public interest in disclosure of the information had already been taken into account, since the possible effects of glyphosate emissions were shown in other parts of the draft report that had already been disclosed to the public, in particular those concerning relevant impurities and metabolites. As regards the information relating to the non-relevant impurities that was included in the document at issue, the Commission considered it to relate to elements which do not present risks to health or the environment but which make it possible to reconstitute the manufacturing process of each product.
- 10 The Secretary General of the Commission then noted that it was apparent from the procedure by which glyphosate had been included in Annex I to Directive 91/414 that the requirements laid down by Regulation No 1367/2006, concerning public disclosure of information on the environmental effects of that substance, had been taken into account. In those circumstances, the protection of the interests of the manufacturers of that substance had to prevail.
- 11 The Secretary General of the Commission concluded that the information requested did not relate to emissions into the environment, within the meaning of Article 6(1) of Regulation No 1367/2006, and that there was no evidence of an overriding public interest in disclosure, within the meaning of Regulation No 1049/2001; in her view, such an interest lay in protecting the commercial interests and intellectual property rights of the glyphosate manufacturers.

Procedure and forms of order sought

- 12 By application lodged at the Court Registry on 14 October 2011, the applicants brought the present action.
- 13 The applicants claim that the Court should:
 - declare that the Commission acted in breach of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998 ('the Aarhus Convention'), Regulation No 1049/2001 and Regulation No 1367/2006;

- annul the contested decision;
 - order the Commission to pay the costs.
- 14 The Commission contends that the Court should:
- dismiss the action as unfounded;
 - order the applicants to pay the costs.
- 15 By way of measure of organisation of procedure, the Court asked the applicants two questions, which were answered by letter lodged at the Registry on 18 January 2013.
- 16 By order of 9 January 2013, the Commission was asked to produce the document at issue before the Court and to identify the parts concerning the purity of glyphosate, the ‘identity’ and quantities of all the impurities present in that substance and the analytical profile of the batches used for the testing. The Court stated that the document at issue would not be communicated to the applicants. By letter lodged on 25 January 2013, the Commission produced the document at issue.
- 17 The document at issue consists of three sub-documents. The first sub-document is entitled ‘Monograph – 11 December 1998 – Volume 4 – Part A – Glyphosate’ and has eight parts, entitled ‘C.1 Confidential Information’, ‘C.1.1 Detailed information on the manufacturing process or processes for the active substance (Annex II A 1.8)’, ‘C.1.2 Detailed specification of the active substance (Annex II A 1.9 to 1.11)’, ‘C.1.3 Detailed specification of the preparations (Annex II A 1.4)’, ‘C.2 Summary and evaluation of information relating to the collective submission of dossiers’, ‘C.2.1 Summary of information and documentation provided (Dossier Document B)’, ‘C.2.2 Assessment of the information and documentation provided’ and ‘C.2.3 Conclusion as to whether the steps taken by the notifiers were reasonable or not’. The second sub-document, entitled ‘Addendum to the Monograph – Volume 4 of 11 December 1998 – Glyphosate – Glyphosate-trimesium – Part A – Glyphosate’, is dated 14 January 2000 and has just one part, entitled ‘C.1.2.1 Identity of isomers, impurities and additives (Annex II A 1.10)’. The third sub-document, entitled ‘Addendum 2 to the Monograph – Volume 4 of 11 December 1998 – Glyphosate – Glyphosate-trimesium’, is dated 12 May 2001 and has three parts, entitled ‘C.1.1 Detailed information on the manufacturing process or processes for the active substance (Annex II A 1.8)’, ‘C.1.2 Detailed specification of purity of the active substance’ and ‘C.1.2.1 Identity of isomers, impurities and additives (Annex II A 1.10)’.
- 18 By letter of 25 January 2013, the Commission also identified the parts of the three sub-documents that concern the purity of glyphosate, the ‘identity’ and quantities of all the impurities present in that substance and the analytical profile of the batches used for the testing.

The scope of the dispute

- 19 The scope of the dispute must be clarified in three respects.
- 20 First, the Commission submitted that neither the decision of 6 May 2011 nor the contested decision contain a refusal of access to the full, complete and original test documents supplied by the operators seeking the inclusion of glyphosate in Annex I to Directive 91/414, requested by the applicants in their letter of 20 December 2010. In accordance with the rules on the examination of active substances included in plant protection products, the Commission received from the Federal Republic of Germany only a summary dossier concerning glyphosate, containing a copy of the notification, recommended conditions for use and summaries and results of trials, but not the studies and protocols themselves.

- 21 The applicants stated at the hearing that they accepted that the Commission did not possess those documents. The dispute therefore does not concern a refusal of access to that documentation.
- 22 Secondly, the applicants stated that, to the extent that it contains information on the contractual relationships between various operators which notified the active substance or information on the method of manufacture of that substance, the document at issue was of no interest to them. Accordingly, they request the annulment of the contested decision only inasmuch as the Commission thereby refused access to information on the degree of purity of the active substance, the ‘identity’ and quantities of the impurities present in the technical material, the analytical profile of the batches, and the exact composition of the product developed.
- 23 Thirdly, the applicants specified, at the hearing, what they considered to be information on the ‘identity’ and the quantity of the impurities and the analytical profile of the batches. As regards the impurities, they stated that they sought to discover the other chemical substances produced in the course of the glyphosate manufacturing process and their quantity. As regards the analytical profile of the batches submitted by the undertakings for the tests, they stated that they sought to discover the content and the composition of the batches, in particular the other chemical substances added, the description of the tests and their actual effects.
- 24 The dispute must therefore be limited to the part of the document at issue which contains information on the degree of purity of the active substance, the ‘identity’ and quantities of all the impurities present in the technical material, the analytical profile of the batches, and the exact composition of the product developed, as specified in paragraph 23 above.

Law

- 25 In their application, the applicants raise three pleas in law. First, they submit that Article 4(5) of Regulation No 1049/2001 does not constitute a right of veto for a Member State and that the Commission may not rely on the Member State’s opinion regarding the application of an exception provided for by Article 4(2) of that regulation. Secondly, they maintain that the exception to the right of access designed to protect the commercial interests of a natural or legal person must be waived, because of an overriding public interest in disclosure of the information requested, which relates to emissions into the environment. Thirdly, they argue that the contested decision is not in accordance with Article 4(2) of Regulation No 1049/2001 and Article 4 of the Aarhus Convention, on the ground that the Commission did not evaluate the actual risk of damage to the commercial interests invoked.
- 26 It is necessary to begin by examining the second plea in law, which means that the Court must determine, first of all, the scope of the right of access arising from the first sentence of Article 6(1) of Regulation No 1367/2006 and, subsequently, the notion of information relating to emissions into the environment.

The scope of the right of access arising from the first sentence of Article 6(1) of Regulation No 1367/2006

- 27 In the first place, it should be noted that, in accordance with the first recital in the preamble to Regulation No 1049/2001, that regulation reflects the intention expressed in the second paragraph of Article 1 TEU – inserted by the Treaty of Amsterdam – of marking a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen. As is stated in recital 2 in the preamble to Regulation No 1049/2001, the right of public access to documents of the institutions is related to the democratic nature of those institutions (see Case C-506/08 P *Sweden v MyTravel and Commission* [2011] ECR I-6237, paragraph 72 and the case-law cited).

- 28 To that end, Regulation No 1049/2001 is intended, as is apparent from recital 4 in its preamble and from Article 1, to give the fullest possible effect to the right of public access to documents of the institutions (see *Sweden v MyTravel and Commission*, paragraph 27 above, paragraph 73 and the case-law cited).
- 29 That right is none the less subject to certain limitations based on grounds of public or private interest. More specifically, and in reflection of recital 11 in the preamble thereto, Article 4 of Regulation No 1049/2001 provides that the institutions are to refuse access to a document where its disclosure would undermine the protection of one of the interests protected by that provision (*Sweden v MyTravel and Commission*, paragraph 27 above, paragraph 74 and the case-law cited). In particular, Article 4(5) provides that a Member State may request an institution not to disclose a document originating from that State without its prior agreement.
- 30 Where a Member State has made use of the option given to it by Article 4(5) of Regulation No 1049/2001 to request that a specific document originating from that State should not be disclosed without its prior agreement, disclosure of that document by the institution requires the prior agreement of that Member State to be obtained (Case C-64/05 P *Sweden v Commission* [2007] ECR I-11389, paragraph 50).
- 31 However, it follows from the case-law that Article 4(5) of Regulation No 1049/2001 entitles the Member State concerned to object to the disclosure of documents originating from it only on the basis of the substantive exceptions laid down in Article 4(1) to (3) and if it gives proper reasons for its position (*Sweden v Commission*, paragraph 30 above, paragraph 99).
- 32 Nevertheless, since they derogate from the principle of the widest possible public access to documents, those exceptions must be interpreted and applied strictly (see *Sweden v MyTravel and Commission*, paragraph 27 above, paragraph 75 and the case-law cited).
- 33 Where the exception invoked is one of those set out in Article 4(2) of Regulation No 1049/2001, the Member State opposing the divulcation of documents originating from that Member State must examine whether there is an overriding public interest in disclosure of the documents concerned.
- 34 In the present case, it is apparent from the contested decision that the Federal Republic of Germany, the Member State from which the document at issue originates, opposed its disclosure, basing its refusal on the exception provided for in Article 4(2), first indent, of Regulation No 1049/2001, relating to the undermining of the protection of commercial interests of a natural or legal person, including intellectual property, and that it considered that there was no overriding public interest justifying its disclosure.
- 35 In the second place, under Article 3 of Regulation No 1367/2006, Regulation No 1049/2001 constitutes the legislation applicable to any request by an applicant for access to environmental information. It is apparent from recitals 8 and 15 in the preamble to Regulation No 1367/2006, and, in particular, from the phrase 'subject to any more specific provisions in this Regulation concerning requests for environmental information, read in conjunction with Articles 3 and 6 of that regulation, that that regulation contains provisions which replace, amend or clarify certain provisions of Regulation No 1049/2001 where the request for access relates to environmental information or information which relates to emissions into the environment (Case T-29/08 *LPN v Commission* ECR II-6021, paragraphs 105 and 106, which is the subject of appeals pending before the Court of Justice in Case C-514/11 P and Case C-605/11 P).
- 36 As regards the right of access to documents containing environmental information, the obligation to interpret the exceptions laid down by Regulation No 1049/2001 strictly – reaffirmed by the second sentence of recital 15 in the preamble to Regulation No 1367/2006 and the second sentence of Article 6(1) thereof – is borne out, on the one hand, by the need for the institution concerned to take

account of the public interest in disclosure of such information and by the reference to whether that information relates to emissions into the environment and, on the other hand, by the fact that Regulation No 1049/2001 does not contain any similar details regarding the application of those exceptions in that field (*LPN v Commission*, paragraph 35 above, paragraph 107).

- 37 The first sentence of Article 6(1) of Regulation No 1367/2006 lays down a legal presumption that an overriding public interest in disclosure exists where the information requested relates to emissions into the environment, except where that information concerns an investigation, in particular one concerning possible infringements of European Union law (*LPN v Commission*, paragraph 35 above, paragraph 108).
- 38 Accordingly, the first sentence of Article 6(1) of Regulation No 1367/2006 requires that if the institution concerned receives an application for access to a document, it must disclose it where the information requested relates to emissions into the environment, even if such disclosure is liable to undermine the protection of the commercial interests of a particular natural or legal person, including that person's intellectual property, within the meaning of Article 4(2), first indent, of Regulation No 1049/2001.
- 39 The arguments put forward by the Commission to justify a different interpretation of the first sentence of Article 6(1) of Regulation No 1367/2006 must be rejected.
- 40 First, the Commission claims that the disclosure of information contained in the document at issue is liable to seriously disturb the balance established by the European Union legislature in Directive 91/414, by bringing about significant economic consequences for operators which have followed the authorisation procedure for active substances provided for in that directive. However, although that directive contains provisions intended to protect the confidentiality of information, consisting of commercial and industrial secrets, provided in the context of the authorisation procedure for active substances organised by that directive, it suffices to note that the existence of such rules cannot rebut the irrebuttable presumption arising from Article 6(1) of Regulation No 1367/2006 (see paragraph 38 above).
- 41 Secondly, the position is the same in a situation where the disclosure of certain information relating to impurities found in an active substance would be deemed to undermine the protection of the commercial interests of the persons concerned, under Article 63(2) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1). That provision merely refers to the overriding public interest protected by Article 4(2), first indent, of Regulation No 1049/2001, over which the overriding public interest referred to in the first sentence of Article 6(1) of Regulation No 1367/2006 takes precedence.
- 42 Thirdly, the Commission refers to the case-law whereby, it submits, the Court of Justice set out the specific rules for the interpretation of Regulation No 1049/2001, where the documents whose disclosure is requested are also subject to special rules as regards their communication to the interested parties in the context of a particular procedure (Case C-139/07 P *Commission v Technische Glaswerke Ilmenau* [2010] ECR I-5885, paragraph 58, and Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden and Others v API and Commission* [2010] ECR I-8533, paragraph 100). Assuming that in order to interpret Article 4(2), first indent, of Regulation No 1049/2001, it were necessary to take account of the fact that the information requested in the present case had been communicated to the rapporteur Member State in the application procedure for the inclusion of glyphosate in Annex I to Directive 91/414, that would, in accordance with the abovementioned judgments, only give rise to a general presumption that the disclosure of such information would undermine the interests protected by that provision. Such a conclusion would have no bearing on the

scope of the rule laid down in the first sentence of Article 6(1) of Regulation No 1367/2006, by which the overriding public interest referred to therein is given precedence, irrebuttably, over the risk of undermining commercial interests, including intellectual property.

- 43 Fourthly, the Commission is of the view that it is necessary to ensure that Regulation No 1049/2001 and Regulation No 1367/2006 are interpreted consistently with European Union law and the international agreements entered into by the European Union, in the present case the Charter of Fundamental Rights of the European Union (OJ 2010 C 83, p. 389) ('the Charter') and the Agreement on the Trade Related Aspects of Intellectual Property Rights of 15 April 1994 (OJ 1994 L 336, p. 214; 'the TRIPS Agreement') that forms Annex 1 C to the Agreement establishing the World Trade Organisation (WTO) (OJ 1994 L 336, p. 3).
- 44 It should indeed be noted that Articles 16 and 17 of the Charter enshrine, respectively, the freedom to conduct a business and the right to property, which is also a general principle of European Union law, as is the protection of business secrets (see Case C-1/11 *Interseroh Scrap and Metal Trading* [2012] ECR, paragraph 43 and the case-law cited). Nevertheless, it cannot be accepted that, for the purpose of ensuring a consistent interpretation of European Union law, the validity of a clear and unconditional provision of secondary legislation may be called into question (see, by analogy, *Interseroh Scrap and Metal Trading*, paragraphs 44 and 46). Under the pretext of ensuring a fair balance between the protection of the fundamental right to property, which encompasses intellectual property rights, and the protection of other fundamental rights, the Commission seeks, by its line of argument, not to ensure a consistent and harmonious interpretation of Regulation No 1049/2001 and Regulation No 1367/2006 with the provisions of the Charter, of Directive 91/414 or of Regulation No 1107/2009, but to preclude the application of the first sentence of Article 6(1) of Regulation No 1367/2006. Such an approach cannot, in any event, be accepted, since it would amount to disapplying a clear and unconditional provision of a European Union regulation, which is not even claimed to be contrary to a superior rule of law.
- 45 Moreover, the provisions of the TRIPS Agreement, which is part of the WTO Agreement, signed by the Community and subsequently 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) (OJ 1994 L 336, p. 1), constitute an integral part of the European Union legal order. Where there are European Union rules in a sphere concerned by the TRIPS Agreement, European Union law will apply, which will mean that it is necessary, as far as possible, to adopt an interpretation in keeping with the TRIPS Agreement, although no direct effect may be given to the provision of that agreement at issue (see Case C-431/05 *Merck Genéricos - Produtos Farmacêuticos* [2007] ECR I-7001, paragraph 35 and the case-law cited). The Commission claims that it is necessary to interpret Regulation No 1049/2001, Regulation No 1367/2006 and the provisions of the Aarhus Convention relating to emissions into the environment in a balanced and proportional manner, so as to ensure that they do not contradict the provisions of Article 39(2) and (3) of the TRIPS Agreement, which protect commercially valuable information from public disclosure. In essence, the Court is asked to ensure an interpretation of the provisions of the first sentence of Article 6(1) of Regulation No 1367/2006 that is consistent with Article 39(2) and (3) of the TRIPS Agreement. However, once again, it must be pointed out that the Commission's line of argument leads to the provisions of the first sentence of Article 6(1) of Regulation No 1367/2006 being disapplied and not to ensuring an interpretation of the wording of that article that is consistent with the content of Article 39(2) and (3) of the TRIPS Agreement, since it gives precedence to the protection of intellectual property rights over the irrebuttable presumption of the disclosure of information where it relates to emissions into the environment. Such an approach cannot, in any event, be adopted, since it would in fact call into question the lawfulness of the first sentence of Article 6(1) of Regulation No 1367/2006 in the light of Article 39(2) and (3) of the TRIPS Agreement (see, by analogy, Case T-201/04 *Microsoft v Commission* [2007] ECR II-3601, paragraph 800).

46 It follows from paragraphs 35 to 45 above that the first sentence of Article 6(1) of Regulation No 1367/2006 requires the disclosure of a document where the information requested relates to emissions into the environment, even if there is a risk of undermining the interests protected by Article 4(2), first indent, of Regulation No 1049/2001, and that that interpretation cannot be called into question under the pretext of an interpretation that is consistent, harmonious, or in conformity with Articles 6 and 17 of the Charter, Article 39(2) and (3) of the TRIPS Agreement, Directive 91/414 or Regulation No 1107/2009.

The notion of information relating to emissions into the environment

47 According to the applicants, the Commission infringed the presumption arising from Article 6(1) of Regulation No 1367/2006, the information requested being environmental information relating to emissions into the environment. The information directly linked to the purity of glyphosate, the 'identity' and quantities of all the impurities present in that substance and the analytical profile of the batches used for the tests and studies in view of which that substance was included in Annex I to Directive 91/414 constitute such information, since the composition of the product allows the determination of the toxic elements emitted.

48 The Commission submits that the notion of emissions is to be interpreted restrictively and that, according to the Implementation Guide to the Aarhus Convention, published by the United Nations Economic Commission for Europe (UNECE) in 2000 ('the Implementation Guide'), it means the direct or indirect release of substances from installations. Furthermore, it states that the requested information does not relate to emissions into the environment, since the information contained in the document at issue concerns the detailed specifications of the glyphosate manufacturing processes provided by the various undertakings which applied for inclusion and which are protected by intellectual property rights, it being impossible to distinguish and isolate the information of interest to the applicants from the information on the manufacturing processes of the active substance, which are the very subject of the document at issue.

49 In the first place, although the Commission claims that the provision relating to the emissions into the environment must be interpreted restrictively, it must be pointed out that an analysis of the right of access to documents of the European Union's institutions, as laid down in Article 15 TFEU and Regulation No 1049/2001, and clarified, as regards environmental information or information relating to emissions into the environment, by Regulation No 1367/2006, does not lead to such a conclusion.

50 Where the institutions intend to refuse a request for access to documents on the basis of an exception, that exception must be interpreted and applied strictly (see *Sweden v MyTravel and Commission*, paragraph 27 above, paragraph 75 and the case-law cited), so as not to frustrate application of the general principle of giving the public the widest possible access to documents held by the institutions (Joined Cases T-109/05 and T-444/05 *NLG v Commission* [2011] ECR II-2479, paragraph 123).

51 By providing that, where the information requested relates to emissions into the environment, an overriding public interest in disclosure exists which is superior to an interest protected by an exception, the first sentence of Article 6(1) of Regulation No 1367/2006 allows a specific implementation of that general principle.

52 It must also be pointed out that, as stated in recital 15 in the preamble to Regulation No 1367/2006, only the grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment. As was noted at the hearing, the Commission's legislative proposal COM(2003) 622 final of 24 October 2003 provided for the exceptions to the right of access to documents arising from Article 4(1) to (3) of Regulation No 1049/2001 to be applied to requests for access to environmental information, without

distinguishing information relating to emissions into the environment. It is the Council Common Position of 18 July 2005 which opted for a more restrictive approach as regards the exceptions to the right of access, by reformulating recital 15 in a wording close to its final version and by inserting the first sentence of Article 6(1), containing the legal presumption in favour of the disclosure of information relating to emissions into the environment.

- 53 It follows from the foregoing that neither the logic of the right of access to documents of the EU institutions, as it emerges from Regulation No 1049/2001 and Regulation No 1367/2006 and their application, nor the wording of the latter regulation, as clarified by the preparatory documents, implies that the notion of emission into the environment should be interpreted restrictively. Accordingly, in order for the disclosure to be lawful, it suffices that the information requested relate in a sufficiently direct manner to emissions into the environment.
- 54 That conclusion is not called into question by the Commission's reference to the Implementation Guide as support for its contention that the notion of emissions means emissions from installations.
- 55 The Court of Justice has held that the Implementation Guide's interpretation of the Aarhus Convention is not binding (Case C-204/09 *Flachglas Torgau* [2012] ECR, paragraph 36), Advocate General Sharpston having concluded that it has no authoritative status as regards the interpretation of the Convention (Opinion in *Flachglas Torgau*, point 58). This must be the case *a fortiori* as regards the interpretation of Regulation No 1367/2006.
- 56 Moreover, the Implementation Guide refers to the notion of emission under Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26), Article 2(5) of which defines emission as 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 installation being a stationary unit where one or more activities listed in Annex I are carried out). Such a definition can be explained by the purpose of Directive 96/61, namely integrated prevention and control of pollution resulting from exclusively industrial activities. It must be pointed out that neither the scope of application of the Aarhus Convention nor that of Regulation No 1367/2006 is limited to the consequences of such activities. Therefore, the definition of emission into the environment which emerges from the Implementation Guide cannot be used to interpret Regulation No 1367/2006.
- 57 In the second place, it must be determined whether the document at issue contains information which relates, sufficiently directly, to emissions into the environment.
- 58 First, it must be noted that, as pointed out in paragraph 22 above, the applicants are not requesting access to information on the contractual relationships between various operators which notified the active substance or information on the method of manufacture of that substance, contained in the parts entitled, 'C.1.1 Detailed information on the manufacturing process or processes for the active substance (Annex II A 1.8)' (pp. 1 to 11) and 'C.2 Summary and evaluation of information relating to the collective submission of dossiers' (pp. 88 and 89) of the first sub-document submitted to the Court by the Commission and 'Detailed information on the manufacturing process or processes for the active substance (Annex II A 1.8)' (pp. 1 to 3 inclusive) of the third sub-document submitted by the Commission.
- 59 Secondly, at the hearing the applicants clarified certain aspects of their request for access. They seek access to information relating to the 'identity' and quantity of impurities present in the glyphosate, the analytical profile of the batches, in particular their composition, the 'identity' and quantity of chemical substances added during the tests, the duration of those tests and the actual effects on the active substance.

- 60 Thus, it is only inasmuch as the parts of the document at issue other than those referred to in paragraph 58 above contain information such as that mentioned in paragraph 59 above or information which relates to the composition of plant protection products containing glyphosate, and on condition that the information relates to emissions into the environment, that it should be found that the Commission made an error of assessment in refusing to disclose them.
- 61 Thirdly, the applicants clarified the manner in which the information relating to the ‘identity’ and the quantity of impurities in the glyphosate, the analytical profile of the batches tested and the composition of products containing that substance could allow the determination of the level of emission of those impurities into the environment.
- 62 In the application, the applicants claim that the residues of the active substance in the environment and their effect on human health are directly linked to the purity of the substance, in particular to the ‘identity’ and the quantity of impurities present in the glyphosate, and not only to the ‘identity’ and the quantity of the impurities considered relevant by the Commission. In the applicants view, it is also of great interest to know the analytical profile of the batches used for the testing, in order to be able to interpret the tests and studies on which the inclusion of glyphosate in Annex I to Directive 91/414 was based. That, they claim, is the reason that the exact composition of products developed and tested must be disclosed, allowing the determination of which toxic elements are emitted into the environment and are liable to remain there for some time.
- 63 In their reply to the Court’s written questions, the applicants also clarified the manner in which the requested information is linked to the notion of emission into the environment. Thus, they stated that the impurities contained in glyphosate are released into the environment at the same time as the glyphosate itself. Moreover, those impurities may have, depending on their quantity, an influence on the outcome of the tests that are prescribed for the examination of the adverse effects of glyphosate with a view to its inclusion in Annex I of Directive 91/414. In order to be able to verify whether the tests carried out for the purpose of its inclusion are representative of the emissions into the environment that occur during the use of plant protection products containing glyphosate, it is thus essential to have the information requested about the analytical profile of batches. In annex to their reply, the applicants included a document indicating, inter alia, a process by which glyphosate is manufactured and the elements that are added in order to produce that active substance, and emphasising the fact that the impurities present in the active substance produced will be emitted into the environment. Furthermore, that document stresses the importance of obtaining the information relating to the analytical profile of the lots tested, in order to verify whether that profile corresponds to that of the products placed on the market, since a small scale production may lead to an analytical profile of glyphosate different from that produced on a large scale with a view to its marketing. In obtaining that information, it is possible to verify any differences between the analytical profiles of the batches tested with a view to the inclusion of glyphosate in Annex I to Directive 91/414 and those of products placed on the market, and to determine whether the tests carried out were relevant as regards the actual emission of glyphosate into the environment. Lastly, that document emphasises that the information requested would allow the verification of the level of the metabolite into which glyphosate transforms; a metabolite which is emitted into the environment, is very persistent and pollutes groundwater.
- 64 While the Commission acknowledges that every substance is inevitably released into the environment at some stage of its life cycle, it submits that the document at issue does not contain any information which could be considered as relating to emissions into the environment, but rather contains information relating to the manufacturing processes used by the various operators that notified glyphosate for the purpose of its inclusion in Annex I to Directive 91/414. It opposes the disclosure of information relating to the impurities and the analytical profile of the batches, on the ground that such disclosure would make it possible to reconstitute the manufacturing process of the active substance and the related business secrets, since it is impossible to distinguish and isolate the various categories of information contained in that document. Lastly, the Commission claims that all of the relevant

information from a toxicological perspective and as regards the effect of the active substance on human health were subject to a careful analysis and were disclosed by the Commission decision of 6 May 2011. It also states that the applicants have not indicated the reasons why the documents which have already been disclosed are not sufficient for assessing the validity of the process of glyphosate's inclusion in Annex I to Directive 91/414.

- 65 Fourthly, in the context of measures of inquiry, the Court has taken note of the document at issue, which is divided, as the Commission stated in its letter accompanying the document, into sub-documents.
- 66 The first sub-document contains, inter alia, a part entitled 'C.1.2 Detailed specification of the active substance (Annex II A 1.9 to 1.11)', indicating, on the one hand, the notifications submitted to the rapporteur Member State by the operators seeking the inclusion of glyphosate in Annex I to Directive 91/414 and identifying the various impurities contained in the glyphosate produced as well as the exact or maximum quantity of each of those impurities (part 'C.1.2.1 Identity of isomers, impurities and additives (Annex II A 1.10)', pp. 11 to 61) and, on the other hand, the analytical profile of the batches tested, setting out, in a table, the quantities of all of the impurities present in the various batches as well as the minimum, median and maximum quantities of each of the impurities, the majority of the operators in question having also submitted the methods of analysis and validation of the data (part 'C.1.2.2 Analytical profile of batches (Annex II A 1.11)', pp. 61 to 84). The first sub-document also contains a part entitled 'C.1.3 Detailed specification of the preparations (Annex II A 1.4)', describing the content of the plant protection product containing glyphosate manufactured by each of the operators which notified that active substance (pp. 84 to 88).
- 67 The single sub-part of the second sub-document (see paragraph 17 above) consists of a table which indicates the various operators that notified glyphosate, the structural formula of each impurity present in the active substance of each of those operators and the exact or maximum quantity of each of those impurities (pp. 1 to 6).
- 68 The third sub-document comprises, inter alia, two parts respectively entitled 'C.1.2 Detailed specification of the active substance (Annex II A 1.9 to 1.11)' and 'C.1.2.1 Identity of isomers, impurities and additives (Annex II A 1.10)' (pp. 4 to 13). Part C.1.2 indicates the various impurities contained in the glyphosate-trimesium as well as the exact or maximum quantity of each of those impurities (p. 4), and the analytical profile of the batches tested, setting out in a table the quantities of all of the impurities present in the various batches (p. 7). Part C.1.2.1 is comprised of a table similar to that contained in the second sub-document and contains information of the same nature (pp. 8 to 13).
- 69 It must be pointed out that, as the applicants claim, a large part of the data in the sub-documents of which the document at issue is composed, referred to in paragraphs 66 to 68 above, concerns the identification and the quantity of various impurities present in the active substance notified by each of the operators which took part in the procedure for the inclusion of glyphosate in Annex I of Directive 91/414. Since the active substance must be included in a plant protection product, which, it is common ground, will be released into the air, principally by spraying, the 'identity' and the quantity of each impurity contained in such a substance constitutes information relating, in a sufficiently direct manner, to emissions into the environment, as the applicants rightly note (see paragraphs 62 and 63 above).
- 70 However, it must be made clear that the name and the exact or maximum quantity of impurities present in the active substance notified by each of the operators concerned constitute the sole information sought by the applicants, as they indicated at the hearing.
- 71 As regards the analytical profile of batches tested, it must also be stated that the information concerning the quantity of all the impurities present in the various lots and the minimum, median and maximum quantity of each of those impurities (see paragraphs 66 to 68 above) – which are set

out in a table for each of the operators which applied for the inclusion of glyphosate in Annex I to Directive 91/414 in the first sub-document and in the summary tables in the second and third sub-documents – constitutes, with the exception of the structural formulas of impurities set out in the summary tables in the second and third sub-documents, information relating, in a sufficiently direct manner, to emissions into the environment.

- 72 However, the information on the methods of analysis and validation of the data provided to establish the analytical profile of batches does not constitute information relating to emissions into the environment, since it does not emerge from the analysis of the single part of the document at issue containing such information, namely part ‘C.1.2.2 Analytical profile of batches (Annex II A 1.11)’, a subdivision of part C.1.2 of the first sub-document, that it contains information allowing the determination, in a sufficiently direct manner, of the level of emission into the environment of the various components of the active substance.
- 73 As regards the composition of plant protection products developed by the operators which applied for the inclusion of glyphosate in Annex I to Directive 91/414, it must be noted that the exact quantities, per kilogramme or per litre, of the active substance and of adjuvants used in their manufacture are indicated in part C.1.3, entitled ‘Detailed specification of the preparations (Annex II A 1.4)’ of the first sub-document and that such information relates in a sufficiently direct manner to emissions into the environment (see paragraph 69 above).
- 74 None of the Commission’s arguments are capable of calling into question the findings made in paragraphs 69 to 73 above, since they fail to show that the information requested does not relate to emissions into the environment (see paragraph 64 above).
- 75 It follows from the foregoing that the Commission made an error of assessment in rejecting the application for access to the document at issue, to the extent that the request in question concerned information relating to emissions into the environment, namely, first, the ‘identity’ and the quantity of all of the impurities contained in the active substance notified by each operator, as specified in paragraph 70 above, set out in part C.1.2.1 of the first sub-document (pp. 11 to 61), in part C.1.2.1 of the second sub-document (pp. 1 to 6) and in part C.1.2.1 of the third sub-document (pp. 4 and 8 to 13), secondly, the impurities present in the various batches and the minimum, median and maximum quantities of each of those impurities, set out, for each operator, in the table included in part C.1.2.2 of the first sub-document (pp. 61 to 84) and in part C.1.2.4 of the third sub-document (p. 7), and, thirdly, the composition of plant protection products developed by the operators, set out in part C.1.3, entitled ‘Detailed specification of the preparations’, of the first sub-document (pp. 84 to 88).
- 76 Accordingly, it is appropriate to uphold the second plea in law and, without it being necessary to examine the first and third pleas in law, to annul the contested decision inasmuch as access is thereby refused to the information specified in paragraph 75 above.

Costs

- 77 Under Article 87(2) of the Rules of Procedure of the Court, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party’s pleadings. In the present case, since the Commission has been unsuccessful, it must be ordered to bear its own costs and to pay those of the applicants.

On those grounds,

THE GENERAL COURT (Second Chamber)

hereby:

- 1. Annuls the Commission's decision of 10 August 2011 refusing access to volume 4 of the Draft Assessment Report issued by the Federal Republic of Germany as rapporteur Member State for the active substance glyphosate under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market inasmuch as it refuses access to the parts of that volume containing information relating to emissions into the environment: the 'identity' and quantity of all of the impurities in the active substance notified by each operator, set out in part C.1.2.1 of the first sub-document (pp. 11 to 61), in part C.1.2.1 of the second sub-document (pp. 1 to 6) and in part C.1.2.1 of the third sub-document (pp. 4 and 8 to 13); the impurities present in the various batches and the minimum, median and maximum quantities of each of those impurities, set out, for each operator, in the table included in part C.1.2.2 of the first sub-document (pp. 61 to 84) and in part C.1.2.4 of the third sub-document (p. 7); and the composition of the plant protection products developed by the operators, set out in part C.1.3, entitled 'Detailed specification of the preparations', of the first sub-document (pp. 84 to 88) of that volume;**
- 2. Orders the Commission to pay the costs.**

Forwood

Dehousse

Schwarcz

Delivered in open court in Luxembourg on 8 October 2013.

[Signatures]