OPINION OF ADVOCATE GENERAL FENNELLY

delivered on 28 January 1999 *

1. In the present proceedings, the Commission is challenging the adequacy of the transposition by Germany of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment ('the Directive') [1] on four points: the exclusion of judicial bodies, the partial supply of information, the scope of preliminary investigation proceedings and the charging of costs.

I — The relevant legal provisions

(a) *The Directive*

2. The Directive is motivated by the presumption set out in the third recital in the preamble that 'access to information on the environment held by public authorities will improve environmental protection'. Its objective, as declared in Article 1, is 'to ensure freedom of access to, and dissemination of, information on the environment held by public authorities and to set out the basic terms and conditions on which such information should be made available'. Article 2 defines the key terms 'information relating to the environment' and 'public authorities'. Article 3 obliges Member States to ensure that their public authorities make available such information at the request of 'any natural or legal person ... - without his having to prove an interest'; it also permits refusal on specified grounds. Article 4 stipulates a right of judicial or administrative review of decisions refusing access, while Article 5, which is central to the most difficult issue in the present case, deals with the question of the charge which can be levied for supplying the information. Article 6 extends the duties of public authorities under the Directive to 'bodies with public responsibilities for the environment and under the control of public authorities', while Article 7 requires the Member States to publish periodic reports on the state of the environment. The remaining provisions of the Directive are not directly material in the present proceedings.

(b) *The German provisions*

3. Germany sought to transpose the Directive by means of the Umweltinformations-

* Original language: English.

1 — OJ 1990 L 158, p. 56.

gesetz (Law on Information Relating to the Environment, hereinafter 'UIG') of 4 July 1994.[2] The following aspects of the UIG are at issue:

— the exclusion by Paragraph 3(1)(3) of the UIG of courts and prosecuting and disciplinary authorities ('Gerichte, Strafverfolgungs- und Disziplinarbehörden') from the definition of public authorities concerned by the Directive;

— the omission from the UIG of any provision for the supply in part of information, where refusal is permitted pursuant to Article 3(2) of the Directive;

— the exclusion by Paragraph 7(1)(2) of the UIG of any right of access during an administrative procedure;

— the rule in Paragraph 10(1) of the UIG allowing the authorities to charge both direct costs and a fee in the charge for supplying information, and to levy such a charge where a request for information is refused.

2 — BGBl. I 1994, p. 1490.

II — Analysis

(a) *The exclusion of judicial bodies*

4. Article 2(b) of the Directive defines as 'public authorities' (emphasis added):

'any public administration at national, regional or local level with responsibilities, and possessing information, relating to the environment *with the exception of bodies acting in a judicial or legislative capacity*.'

In accordance with the third indent of the first subparagraph of Article 3(2):

'Member States may provide for a request ... to be refused where it affects... matters which are, or have been, *sub judice*, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings.'

While the point was not argued in the present proceedings, I take it that the conditions '(having) responsibilities' and

'possessing information' in Article 2(b) are cumulative and that the obligations of the Directive do not apply to a public administration which, though in possession of relevant information, does not exercise responsibilities 'relating to the environment'.

5. In the Commission's view, the Directive is based on a functional, rather than an organic, conception of public authorities. Courts, prosecuting and disciplinary authorities, which have access to information on the environment in the exercise of their administrative functions are therefore subject to the Directive, whereas they are excluded from the scope of the UIG. Courts may, for example, have statistics on the state of the environment, on acts which cause damage to the environment or on the number of prosecutions for breaches of laws against pollution. While it may be true that courts do not produce, and may not have available, such information, this does not exclude the possibility that they may exercise responsibilities relating to the environment outside their judicial activities.

6. While not disputing that the Directive adopts a functional approach to the notion of public authorities, Germany contends that this refers to authorities which have responsibilities in the environmental field, to the exclusion of those which act 'in a judicial or legislative capacity'. The Commission's argument concerns the marginal possibility that courts, or prosecuting or disciplinary authorities, could have environmental responsibilities outside their judicial activities, a possibility which does not arise in Germany, as information on criminal proceedings is passed on to the statistical offices of the *Länder* rather than being collected by the courts themselves. In Germany's view, Article 2(b) excludes from the Directive public authorities which have responsibilities, and possess information, relating to the environment by virtue of the fact that they exercise a judicial capacity; environmental information acquired by courts is not accessible to the public whether during or after their judicial activities.

7. I agree with both the Commission and Germany that Article 2(b) of the Directive adopts a functional approach to the definition of 'public authorities'. It may be the case that certain bodies which normally act in a judicial capacity could also be called upon to exercise 'responsibilities relating to the environment', in which case they would fall within the ambit of the Directive in respect of environmental information in their possession as a result of those responsibilities. However, I am not satisfied that the Commission has shown that this is the case in Germany, or that German courts do in fact possess information on the environment in the exercise of any functions other

than their judicial capacity, or that prosecuting or disciplinary authorities possess such information which is not covered by the exception allowed under the third indent of the first subparagraph of Article 3(2) of the Directive.

8. It is settled case-law that 'in proceedings under Article 169 ... it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled ... and in so doing the Commission may not rely on any presumption'. [3] The Commission cannot therefore benefit from a presumption that any courts or prosecuting or disciplinary authorities in Germany should be considered 'public authorities' within the meaning of the Directive. I therefore recommend to the Court that it reject the Commission's complaint on this ground.

(b) *The partial supply of information*

9. After listing a number of grounds on which Member States may, but are not obliged to, refuse access to information, the second subparagraph of Article 3(2) of the Directive provides that '[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'.

10. The Commission's complaint is that Germany's failure to include a specific provision ensuring the partial supply of information constitutes an incomplete transposition of the second subparagraph of Article 3(2), to which the practice under German law, which is claimed to ensure such supply automatically, is not a proper remedy. [4] The Commission rejects the interpretation Germany seeks to put on Paragraph 7 of the UIG, to the effect that access is only to be refused 'in so far' as the interests listed would be affected; in its view, the exclusion is absolute, as is illustrated by the use of the term 'wenn'. Proper transposition is particularly important in the present case, where the Directive seeks to create rights for individuals.

11. Germany contends that the sole possible interpretation of Paragraphs 7 and 8 of the UIG is that they define the situations in which access to information must be refused, and that where, and in so far as, no grounds for refusal exist, Paragraph 4 of the UIG provides for a right of access, which by implication includes the supply of information from which those parts covered by the exceptions have been withdrawn. It was not therefore necessary expressly to provide for the right to the partial supply of information in the UIG.

3 — Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 6.

4 — Case C-58/89 *Commission* v *Germany* [1991] ECR I-4983.

Moreover, the German courts are obliged to interpret the UIG in the light of the Directive, in accordance with the case-law of both the Court of Justice and the Bundesverwaltungsgericht (Federal Administrative Court). [5]

12. The Court has long held that transposition 'does not necessarily require the provisions of the directive to be enacted in precisely the same words in a specific express legal provision of national law; a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner'. [6] Moreover, 'the scope of national laws, regulations or administrative provisions must be assessed in the light of the interpretation given to them by national courts'. [7]

13. It is clear from a perusal of the text of the UIG that, while a right of access to environmental information is accorded in general terms by Paragraph 4, the exercise of that right is subject to restrictions under Paragraphs 7 and 8 which accord the public authorities different degrees of discretion. Thus, Paragraph 7(1) indicates that the right does not exist in so far ('soweit') as international relations may be affected, during the continuance ('während der Dauer') of certain procedures and whenever there is reason to believe that ('wenn zu besorgen ist') disclosure of information may have negative consequences for the environment. Paragraph 8(1) provides that the right does not exist in so far ('soweit') as the protection of personal information would be affected or the protection of intellectual property would oppose disclosure.

14. It follows from the third paragraph of Article 189 of the Treaty that the sufficiency of national transposition measures must be evaluated in the light, in particular, of the objective the particular directive seeks to achieve. The effectiveness of the individual right of access granted under the Directive depends both on the willingness of the citizen to make use of his rights and on that of public authorities at all levels of government to provide the information requested. While it is obviously possible to interpret the UIG as allowing for the partial supply of information as required by the second subparagraph of Article 3(2) of the Directive, the language used does not appear to me to be so clear as to be incontrovertible, either for the citizen or for the public authorities concerned; in the absence of any clear instruction in the UIG, the former may be unaware that the existence of one of the grounds of refusal does not preclude partial disclosure and the latter may be discouraged from allowing such disclosure. Furthermore, the judgment of the Bundesverwaltungsgericht does not explicitly deal with the matter of the partial disclosure of information. The legal position is therefore not, in my view, 'sufficiently precise and clear [that] the persons

5 — Respectively, Case 14/83 *Von Colson and Kamann* [1984] ECR 1981, and judgment of 6 December 1996, (1997) *NJW* pp. 753 and 754.

6 — Case 247/85 *Commission* v *Belgium* [1987] ECR 3029, paragraph 9, citing Case 29/84 *Commission* v *Germany* [1985] ECR 1661, paragraph 23.

7 — Case C-382/92 *Commission* v *United Kingdom* [1994] ECR I-2435, paragraph 36.

concerned are made fully aware of their rights', or, in the case of public authorities, their duties, as required by the third paragraph of Article 189 of the EC Treaty. [8] In such circumstances, Germany cannot, in my view, be said to have ensured freedom of access to such partial information.

(c) *The scope of preliminary investigation proceedings*

15. The Commission claims that the notion 'administrative procedure' employed in Paragraph 7(1)(2) of the UIG is much wider than the equivalent derogation allowed by the third indent of the first subparagraph of Article 3(2) of the Directive for 'preliminary investigation proceedings'. The Court has already ruled on the proper interpretation of this provision of the Directive in *Mecklenburg*; [9] apart from noting that, as a derogation, it 'may not be interpreted in such a way as to extend its effects beyond what is necessary to safeguard the interests which it seeks to secure', the Court held that it only included 'an administrative procedure such as that referred to in Paragraph 7(1)(2) of the [UIG], which merely prepares the way for an administrative measure, only if it immediately precedes a contentious or quasi-contentious procedure and arises from the need to obtain proof or investigate a matter prior to the opening of the actual procedure'.

16. At the oral hearing, the agent for Germany expressly conceded the Commission's complaint under this head, in the light of the judgment in *Mecklenburg*. That this matter has effectively been decided does not deprive the Commission's complaint of its *raison d'être*; as the Court pointed out in *Commission* v *Germany*, it is only in infringement proceedings that it can reach a formal finding that a Member State has failed in its obligations, and a 'formal finding is a prerequisite for the initiation, where appropriate, of the procedure provided for in Article 171'. [10] I therefore propose that the Court grant the Commission the declaration it has sought on this ground.

(d) *The charging of costs*

17. Article 5 of the Directive provides simply:

'Member States may make a charge for supplying the information, but such charge may not exceed a reasonable cost'. The German provisions at issue are contained in the Umweltinformationsgebührenverordnung (Regulation on Charges for the Supply of Information on the Environment, or 'implementing regulation') made pursuant to Paragraph 10(2) of the UIG, and are

8 — Case 29/84 *Commission* v *Germany*, cited in footnote 6 above, paragraph 23.

9 — Case C-321/96 [1998] ECR I-3809, paragraph 25 of the judgment and paragraph 2 of the operative part respectively.

10 — Case C-301/95 [1998] ECR I-6135, paragraph 15.

applicable to Federal authorities only. They allow the administration to charge, apart from general costs, between DEM 50 and DEM 1 000 for the provision of detailed written information and between DEM 20 and DEM 10 000 for the supply of information depending essentially on the amount of time expended in providing such supply. These charges may be reduced for reasons of equity and if the information has no economic value.

18. The first question which arises in this regard is the interpretation of Article 5, and in particular whether, as a matter of principle, Member States may, in respect of the supply of information, charge an amount representing part of the total overheads, including the manpower or other processing costs of the relevant authorities. At the outset, it should be noted that there are significant variations between the language versions of this provision. Certain versions, including those in the German, Greek, French, Dutch, and Finnish languages, provide for a fee ('Gebühr', 'τέλος', 'redevance', 'vergoeding', 'maksu') the amount of which should not be excessively high. On the other hand, the Spanish, Italian, Portuguese and Swedish versions provide, like the English version, that the Member States may supply the information against payment the amount of which must not exceed '(a) reasonable cost(s)' ('un costo razonable', 'costi ragionevoli', 'um custo razoável', 'en skälig kostnad'); the Danish term 'gebyr' also denotes a cost-related charge.

19. The Commission has suggested that, because of its potentially dissuasive effect, Article 5 should be considered an exception and for that reason should be interpreted very strictly. While I agree, for reasons given below, that the cost of the supply of information can indeed have an impact on the exercise of the rights given, I do not consider that this provision can be treated as a derogation. Article 5 is rather in the nature of a limitation on the discretion of the Member States in laying down the conditions for the exercise of the right of access. The extent of that limitation must be evaluated on the basis of an interpretation of this provision in its context.

20. Germany has argued that Article 5 of the Directive does not authorise the Member States to levy a charge, as neither Article 130s nor any other provision of the Treaty allows the Community to lay down guidelines for the Member States regarding fees which may be charged for administrative tasks. Article 5 of the Directive could therefore only limit the charges and costs which may be levied to the extent that these were so high as to be unreasonable and to prevent, in practice, access to information. The German regulations on administrative costs are based on their reasonableness; the amount of the charges, which takes account of the efforts of the administration including the cost and time of work done, must be reasonable having regard to the value of the information for the applicant. Article 5 does not prevent Member States from charging for refusals of access; since no provision of Community law regulates this

matter, national law applies. The German rules do not prevent the access to information required by the Directive. In any case, the amount would in practice be reduced, or even waived, for reasons of equity.

21. The argument regarding Community competence does not seem particularly relevant, since Germany has not challenged the validity of Article 5. In any event, Germany accepts that the Directive may limit the charges and costs imposed in so far as they are unreasonably high and liable to impede access to information.

22. As the Court noted in *Mecklenburg*, 'the need for a uniform interpretation of Community directives makes it impossible for the text of a provision to be considered, in case of doubt, in isolation; on the contrary, it requires that it be interpreted and applied in the light of the versions existing in the other official languages'. [11] Despite the variations, the different versions of Article 5 have in common the idea that the citizen may only be charged a reasonable amount for the supply of information.

23. The notion of what is 'reasonable' must in my view be interpreted in the light of the general scheme and purpose of the Directive, and of the context in which it is used. As already noted, the Directive proceeds upon the basis that access to environmental information will 'improve environmental protection'. Its primary objective is 'to ensure freedom of access to ... [such] information', and it seeks to achieve this end by obliging the Member States to ensure such information is effectively 'made available ... to any natural or legal person at his request without his having to prove an interest'. In the light of this objective and the means chosen to achieve it, the question of whether the charges for the supply of the information are 'reasonable' must be judged from the perspective of the member of the public requesting the information, rather than from that of the public authority. While it does not expressly preclude a Member State levying a charge for the time and effort of public officials, such an approach seems to me to be fundamentally incompatible with the principal features of the Directive.

24. The underlying objective of the Directive is clearly one of public interest, to wit, improved environmental protection, by ensuring for the benefit of individuals a right of access to information without their having to show any direct interest. Given the public interest character of environmental information, access thereto may be distinguished from both a general right of

11 — Case C-321/96, cited in footnote 9 above.

access to information held by public authorities, [12] where the benefits are of a more general and intangible character, and a right of access to administrative information for those who have a direct interest in its disclosure. [13] In particular, the comparison relied upon by Germany between access to environmental information and the provision of other administrative information governed by the Verwaltungskostengesetz of 23 June 1970 [14] seems to me to be misplaced. This Law is based on the principle of equivalence, that is that there should be a reasonable relationship between the charge, taking into account the efforts of the administration, on the one hand, and the importance, the economic value and any other interest of the applicant, on the other hand. Since access to environmental information is in the public interest, it follows that the public authorities, and, ultimately, the general public through the State budget, should bear that part of the burden of making this information available which is represented by the time and effort of public officials.

25. In restricting the amount of any fee or charge to reasonable costs or a reasonable amount, the Directive recognises that unreasonably high charges would have a dissuasive effect on the exercise of the right which could, in turn, undermine the achievement of the very objectives of the Directive. Unlike most other categories of publicly held information, the likely cost will inevitably have a direct bearing on the extent to which members of the public will use the right of access given to them under national implementing provisions; requiring the individual seeker of information to bear what is effectively the entire cost of processing his request would amount to restricting the enjoyment of the right of access, in practice if not in law, to those who have a direct interest in the information, contrary to the clear exclusion of the need for such an interest.

26. The possibility for Member States to impose charges comprising part of the general cost of the time employed by the public service would also, in my view, be inconsistent with the general scheme of the Directive. Firstly, if the charge could include such indirect costs, the amount of which is largely at the discretion of the administration, it would be somewhat surprising that Article 4 of the Directive did not provide for the possibility of judicial review of the amount of the charges, as it did in respect of the refusal or failure properly to reply to a request. Secondly, such an approach would contradict the clear intention set out in Article 1 of the Directive that the Member States should organise their administrative services so as to 'ensure freedom of access to ... information on the environment held by public authorities'. The matter may be illustrated by an argument of the agent for Germany at the hearing, to the effect that the processing costs could include, for example, those arising from the necessity for an official to undertake a journey.

12 — The importance of which has subsequently been recognised at Community level (see Case C-58/94 *Netherlands* v *Council* [1996] ECR I-2169, paragraphs 34 and 35 of the judgment and the Opinion of Advocate General Tesauro, and the text of Article 191a/255 which the Treaty of Amsterdam would insert into the EC Treaty).

13 — In adopting the Directive, the Council did not take up the suggestion of the Economic and Social Committee that the applicant be obliged to state the reasons for applying for the information (OJ 1989 C 139, p. 47).

14 — BGBl. I 1970 p. 821, as amended.

Under this view, a member of the public could be asked to cover the travel and subsistence costs, as well as the time spent, for an official to go from, to take a hypothetical example, Kiel to Munich, in order to deal with a request submitted in the former town relating to information centralised, for the convenience of the German administration, in the latter. That an individual should be required to bear these costs, even in part, might well seem 'reasonable' to the public authorities; I find it hard to conceive that it might be so viewed by the applicant for information or that the Directive intended he should bear such costs. Thirdly, several provisions of the Directive demonstrate that public authorities are required to undertake important tasks relating to the environment with obvious cost implications. Article 7, for example, obliges Member States to publish periodic descriptive reports containing 'general information ... on the state of the environment'. Article 3(1) requires them to 'define the practical arrangements under which such information is effectively made available'.

27. This interpretation of Article 5 is also consistent with the general understanding in Community law of 'reasonable costs' in relation to the citizen's access to administrative documents held by Community institutions. In their 'Code of conduct concerning public access to Council and Commission documents' of 6 December 1993, the institutions concerned agreed that the applicant could 'have access to documents either by consulting them on the spot or by having a copy sent at his own expense; the fee will not exceed a reasonable amount'. [15] In implementing the Code, both of these institutions, and most of the other Community institutions and ancillary bodies which have adopted rules on access to their documents inspired more or less closely by the provisions of the Code, have adopted a fee based on photocopying charges. [16] While it is true that these provisions post-date the Directive by some years, it is also clear that the thinking of the Council and the Commission, as reflected in the wording of the Code of Conduct and the content of the implementing decisions, bears a distinct resemblance to that of the original Commission proposal which became the Directive, and which provided that '[access] to information contained in ... written documents ... shall be ... either by consultation free-of-charge on the spot or by the issue of copies, in which case the applicant shall be charged the actual cost of reproduction'. [17]

28. Germany has argued strenuously against interpreting the Directive so as to preclude charging for manpower costs. In particular, this would ignore the very great differences between different requests for information, some of which may comprise

15 — OJ 1993 L 340, p. 41.

16 — '[A] fee of EUR 10, plus EUR 0.036 per sheet of paper shall be charged ... for copies of printed documents exceeding 30 pages. Charges for information in other formats shall be set on a case-by-case basis but shall not exceed what is reasonable' (Commission Decision 94/90/EC, ECSC, Euratom, OJ 1994 L 46, p. 58; Decision 96/C 74/02 of the Secretary-General of the Council, OJ 1996 C 74, p. 3).

17 — OJ 1988 C 335, p. 5.

as many as 50 very detailed questions. Furthermore, it would prevent the Member States from taking account of the difference between information which can be used for commercial ends, and that which is of little value, and of the difference between information concerning old projects, which may require considerable mobilisation of administrative resources, and that which is digitalised, and, presumably, rather more easily accessible.

29. In my view, nothing in the Directive would justify the distinction between detailed and less detailed requests for information on which Germany seeks to rely. The Directive applies to 'any available information in written, visual, aural or data-base form on the state of water, air, soil, fauna, flora, land and natural sites, and on activities (...) or measures adversely affecting, or likely so to affect [or protect] these', without distinguishing between the level of detail of the information. Furthermore, it may be that only the provision of detailed information in many circumstances will contribute to the achievement of improved environmental protection.

30. Nor was the Council insensitive to the fact that the processing of information requests might, on occasion, impose an unacceptable burden on the public authorities. The Member States are therefore entitled under Article 3(3) of the Directive to refuse any request which 'would involve the supply of unfinished documents or data or internal communications' or which is 'manifestly unreasonable'. I do not consider, however, that the fact that a request is detailed means that it is prima facie unreasonable, or as going to justify the inclusion of manpower costs in the charge levied for its processing; after all, the Member States are also entitled under the same provision to refuse any request which is 'formulated in too general a manner'. Furthermore, Article 7, which requires the periodic publication of general information on the state of the environment, appears to indicate that individual requests should, in principle, be on questions of detail. In my view, the Directive does not impose unreal, excessive or unreasonable obligations on the Member States. The environmental information to be supplied is what is available and actual, not merely historic or theoretical, and Article 5 should be interpreted accordingly.

31. Neither the estimated economic value of information nor the legal character of the applicant appears to be relevant to the question of whether Article 5 allows account to be taken of overheads in assessing the charge for supply. Answering a request from an individual for information of no economic value may well involve as much administrative work as responding to a request from an industrial giant for information of considerable economic significance.

32. The access of the citizen to information on the environment intended by the Directive is, in my view, the recognition of a right, not the provision of a service, the exercise of which is, furthermore, in the public interest. It is therefore both conceptually and legally incorrect to subject such exercise to the payment of a fee which is intended to cover, at least in principle, all the costs incurred by the public authorities, as distinct from the cost element arising directly as a result of the individual request. I am of the opinion that Article 5 should be interpreted as allowing the Member States to charge either a standard scale of fees, which need not be based directly on the direct costs, or a charge based directly on such costs; in neither case may the fee or the charge exceed an amount which is equivalent to reasonable, direct costs, or be such as to permit the charging out of part of the cost and time of a public authority in performing a public duty.

33. This does not conclude the question of whether the Commission should succeed on the first branch of its complaint under this heading. The Commission maintains that a charge may be levied in exceptional cases, when the search, collation, evaluation and sorting of information which is not otherwise accessible requires a great deal of time. The charge must not therefore be prohibitive and must be at a level which the public can afford. According to the Commission, the levels at which the charge may be levied under the German provisions are such that they exclude access to the information covered; Paragraph 10(1), second sentence, of the UIG establishes that the charges should cover probable costs, and therefore does not limit these to reasonable costs as required by Article 5 of the Directive. The Commission further considers the possibility allowed under the German provisions that a charge be made when a request for information is refused to be contrary to Article 5.

34. It follows from the interpretation of Article 5 I have suggested above that I do not consider that the Member States may impose a fee for the supply of environmental information covering (part of) the general overheads of the administration. Nor do I find any support in the Directive for the distinction upon which the Commission relies between 'exceptional' and other cases, apart from the possibility allowed under Article 3(3) to refuse 'manifestly unreasonable' or excessively general requests which has been noted above. Moreover, the Commission's suggested reliance on the rather vague criterion of a 'great deal of time' could lead to considerable uncertainty in an area where legal certainty clearly may have a significant impact on the effectiveness of the measure.

35. As the Court must respect the limits of the Commission's action, as defined in the pre-contentious phase and the application,

it may not, in my view, declare Germany to be at fault simply because its provisions on the charging of costs allow the administration to charge a fee in addition to direct costs. On the other hand, the Commission should be granted the declaration it requests under the first branch of this head of complaint, in so far as the German provisions, in allowing for a fee to be charged in all cases in respect of the time expended by public officials treating requests for information on the environment, fail to ensure that the total amount charged to the citizen for the supply of such information does not exceed a reasonable cost.

36. The second branch of this head of complaint concerns the possibility implicitly allowed under Paragraph 10(1) of the UIG and the implementing regulation for the administration to impose a charge in cases where the request is refused. Germany argues that the Directive does not restrict the liberty of the Member States to impose a charge when a request for information is refused. At the hearing, the agent for Germany suggested that, if a fee could be charged for supplying information, it could equally be charged when the information was refused.

37. I agree with the Commission that both the wording of Article 5 and the objective of the Directive militate against the approach adopted by Germany. On this point, the language versions seem to be concordant; the German text of Article 5 allows a charge to be imposed in respect of the communication of information ('für die Übermittlung der Informationen'), rather than official action ('Amtshandlungen') in respect of a request, as in Paragraph 10(1) of the UIG. Under Germany's rather literal interpretation of Article 5, the Member States would not even be obliged to ensure that a charge imposed where information was refused did not exceed a reasonable amount. More significantly, however, it is the objective of the Directive, as defined in the preamble and Article 1, and its general scheme, which I have examined at length above, which lead me to conclude that the Directive would not permit a Member State to impose a charge for refusing a request for information. I therefore propose that the Commission be granted the declaration it has sought in respect of the second branch of this head of complaint.

38. If the Court were to follow my recommendations on the merits, the Commission would have succeeded in most of its submissions. In those circumstances I would recommend that Germany be ordered to pay the costs of the action, as the Commission has requested.

III — Conclusion

39. In the light of the foregoing, I recommend that the Court:

(1) Declare that

— by failing to include in its implementing legislation any provision specifically requiring public authorities to supply information in part where it is possible to separate out information on items concerning the interests referred to in the first subparagraph of Article 3(2) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment;

— by failing to restrict the derogation allowed by Paragraph 7(1)(2) of the Umweltinformationsgesetz of 4 July 1994 to administrative procedures which immediately precede a contentious or quasi-contentious procedure and arise from the need to obtain proof or investigate a matter prior to the opening of the actual procedure; and

— by failing to ensure that the total amount charged to the applicant in respect of the supply of environmental information does not exceed a

reasonable cost, and by allowing public authorities to impose a charge where a request is refused;

the Federal Republic of Germany has failed to comply with its obligations under the third indent of the first subparagraph and the second subparagraph of Article 3(2), and Article 5, of Directive 90/313/EEC;

(2) Order the Federal Republic of Germany to pay the costs.