



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

7 March 2024*

(Reference for a preliminary ruling – Environment – Aarhus Convention – Directive 2003/4/EC – Right of access to environmental information – Exceptions – Data relating to the location of permanent sample plots used to draw up a forest inventory)

In Case C-234/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tallinna Halduskohus (Administrative Court, Tallinn, Estonia), made by decision of 4 April 2022, received at the Court on 4 April 2022, in the proceedings

Roheline Kogukond MTÜ,

Eesti Metsa Abiks MTÜ,

Päästame Eesti Metsad MTÜ,

Sihtasutus Keskkonnateabe Ühendus

v

Keskkonnaagentuur,

THE COURT (Fourth Chamber),

composed of C. Lycourgos, President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot (Rapporteur), S. Rodin and L.S. Rossi, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- Roheline Kogukond MTÜ, Eesti Metsa Abiks MTÜ, Päästame Eesti Metsad MTÜ and Sihtasutus Keskkonnateabe Ühendus, by I. Kukk and K. Marosov, vandeadvokaadid,

* Language of the case: Estonian.

– the Keskkonnaagentuur, by M. Triipan, vandeadvokaat,
– the Estonian Government, by M. Kriisa, acting as Agent,
– the European Commission, by G. Gattinara and E. Randvere, acting as Agents,
after hearing the Opinion of the Advocate General at the sitting on 14 September 2023,
gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2(1)(a) and (b), point (d) of the first subparagraph of Article 4(1), points (a), (b) and (h) of the first subparagraph of Article 4(2), and Article 8 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).
- 2 The request has been made in proceedings between, on the one hand, Roheline Kogukond MTÜ, Eesti Metsa Abiks MTÜ, Päästame Eesti Metsad MTÜ and Sihtasutus Keskkonnateabe Ühendus, and, on the other hand, the Keskkonnaagentuur (Environment Agency, Estonia), concerning the latter's refusal to grant their request for access to certain data used to draw up the national statistical forest inventory.

Legal context

International law

- 3 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 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'), states, in Article 4:

'1. Each Party shall ensure that, subject to the following paragraphs of this Article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

...

3. A request for environmental information may be refused if:

...

- (c) the request concerns material in the course of completion or concerns internal communications of public authorities where such an exemption is provided for in national law or customary practice, taking into account the public interest served by disclosure.

4. A request for environmental information may be refused if the disclosure would adversely affect:

- (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for under national law;
- (b) international relations, national defence or public security;
- ...
- (h) the environment to which the information relates, such as the breeding sites of rare species.

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

...'

European Union law

4 Recitals 16, 20 and 21 of Directive 2003/4 read as follows:

‘(16) The right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information in specific and clearly defined cases. Grounds for refusal should be interpreted in a restrictive way, whereby the public interest served by disclosure should be weighed against the interest served by the refusal. The reasons for a refusal should be provided to the applicant within the time limit laid down in this Directive.

...

(20) Public authorities should seek to guarantee that when environmental information is compiled by them or on their behalf, the information is comprehensible, accurate and comparable. As this is an important factor in assessing the quality of the information supplied the method used in compiling the information should also be disclosed upon request.

(21) In order to increase public awareness in environmental matters and to improve environmental protection, public authorities should, as appropriate, make available and disseminate information on the environment which is relevant to their functions, in particular by means of computer telecommunication and/or electronic technology, where available.’

5 According to Article 1 of that directive:

‘The objectives of this Directive are:

- (a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise; and
- (b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.’

6 Article 2 of that directive, entitled ‘Definitions’, provides:

‘For the purposes of this Directive:

- 1. “Environmental information” shall mean any information in written, visual, aural, electronic or any other material form on:
 - (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
 - (b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

...’

7 Article 4 of the same directive, entitled ‘Exceptions’, reads as follows:

- 1. Member States may provide for a request for environmental information to be refused if:

...

- (d) the request concerns material in the course of completion or unfinished documents or data;

...

- 2. Member States may provide for a request for environmental information to be refused if disclosure of the information would adversely affect:

- (a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;
- (b) international relations, public security or national defence;

...

- (h) the protection of the environment to which such information relates, such as the location of rare species.

The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

...'

- 8 According to Article 8 of Directive 2003/4, entitled 'Quality of environmental information':

'1. Member States shall, so far as is within their power, ensure that any information that is compiled by them or on their behalf is up to date, accurate and comparable.

2. Upon request, public authorities shall reply to requests for information pursuant to Article 2(1)b, reporting to the applicant on the place where information, if available, can be found on the measurement procedures, including methods of analysis, sampling, and pre-treatment of samples, used in compiling the information, or referring to a standardised procedure used.'

Estonian law

- 9 Paragraph 34(1) of the riikliku statistika seadus (Law on State statistics) of 10 June 2010 provides that data permitting the direct or indirect identification of a statistical unit, and thus the disclosure of personal data, are to be confidential.

- 10 Points 3 and 19 of Paragraph 35(1) and point 2 of Paragraph 35(2) of the avaliku teabe seadus (Law on public information) of 15 November 2000 state:

'(1) The holder of the information must recognise that the information is for internal use only:

...

(3) information the disclosure of which would damage international relations;

...

(19) other information required by law.

(2) A person who is the head of a public authority or a regional or local authority, or a legal person governed by public law, may classify as information for internal use:

...

(2) a draft document and accompanying documents, before they are adopted or signed.'

- 11 Directive 2003/4 was transposed into Estonian law by the keskkonnaseadustiku üldosa seadus (Law on the general part of the Environment Code) of 16 February 2011.

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

- 12 The applicants in the main proceedings, which are four non-profit-making associations active in the field of environmental protection in Estonia, asked the Environment Agency to disclose to them the data relating to the permanent sample plots used to draw up the national statistical forest inventory, including their location coordinates, arguing, in essence, that, without those coordinates, the measurements taken from those sample plots could not be correctly interpreted or make it possible to draw any conclusions as to the state of the forest.
- 13 The Environment Agency granted that request in part, but did not provide the applicant associations in the main proceedings with the data on the location of the permanent sample plots, since those data were, in its view, subject to restrictions on access under Paragraph 34(1) of the Law on State statistics and Paragraph 35(1)(3) and (2)(2) of the Law on public information. It maintained its refusal to disclose the location data after the Andmekaitseinspektsioon (Data Protection Authority, Estonia) ordered it, on 7 December 2020, to reconsider the request and to allow the applicants in the main proceedings access to the information requested.
- 14 On 19 April 2021, the applicants in the main proceedings brought an action against the refusal of the Environment Agency to disclose the disputed location data before the Tallinna Halduskohus (Administrative Court, Tallinn, Estonia), the referring court, seeking an order requiring that agency to disclose those data to them.
- 15 The referring court states that, first, the Environment Agency maintains that the disclosure of those data would affect the reliability of the national statistical forest inventory and would therefore harm the Republic of Estonia's ability to produce reliable and internationally recognised statistics. Secondly, the applicants in the main proceedings claim that it is impossible to ascertain the reliability of those statistics in the absence of publication of those data. That court notes that access to environmental information is governed by Directive 2003/4 and the Aarhus Convention, which is binding, so that an interpretation of EU law is necessary in order to rule on the action before it.
- 16 In those circumstances, the Tallinna Halduskohus (Administrative Court, Tallinn) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must data such as those relating to the location of permanent sample plots for the statistical forest inventory in the main proceedings be classified as environmental information within the meaning of Article 2(1)(a) or (b) of [Directive 2003/4]?
- (2) If, according to the answer to the first question, they are to be classified as environmental information:
- (a) Is [point (d) of the first subparagraph of Article 4(1)] of [Directive 2003/4] consequently to be interpreted as meaning that data on the location of permanent sample plots for the statistical forest inventory are also to be classified as material in the course of completion or unfinished documents or data?

- (b) Is [point (a) of the first subparagraph of Article 4(2)] of [Directive 2003/4] to be interpreted as meaning that the condition laid down in that provision – namely that the relevant confidentiality is provided for by law – is satisfied where the confidentiality requirement is laid down by law not for a specific type of information but results, by way of interpretation, from a provision of an instrument of a general nature, such as the Law on public information or the Law on State statistics?
 - (c) Is it necessary, for the purposes of the application of [point (b) of the first subparagraph of Article 4(2)] of [Directive 2003/4], to establish the existence of actual negative effects on the international relations of the State resulting from the disclosure of the requested information, or is it sufficient to establish that there is a risk in that regard?
 - (d) Does the ground of “the protection of the environment [in question]” referred to in [point (h) of the first subparagraph of Article 4(2)] of [Directive 2003/4] justify restricting access to environmental information in order to ensure the reliability of State statistics?
- (3) If, according to the answer to the first question, data such as those relating to the location of the permanent sample plots for the statistical forest inventory in the main proceedings are not environmental information, must a request for information concerning such data be regarded as a request for access to information as defined in Article 2(1)(b) of [Directive 2003/4], which must be treated in accordance with Article 8(2)?
- (4) If the third question is answered in the affirmative: Must data such as those relating to the location of the permanent sample plots for the statistical forest inventory in the main proceedings be regarded as information on methods of analysis, sampling and pre-treatment of samples within the meaning of Article 8(2) of [Directive 2003/4]?
- (5) (a) If the fourth question is answered in the affirmative: Can the access to such information under Article 8(2) of [Directive 2003/4] be restricted for any serious reason arising from national law?
- (b) Can a refusal to release information on the basis of Article 8(2) of [Directive 2003/4] be mitigated by other measures, such as measures which provide access to the requested information to research and development institutions or to the [Riigikontroll (Court of Auditors, Estonia)] for the purposes of an audit?
- (6) Can a refusal to release data such as those relating to the location of the permanent sample plots for the statistical forest inventory in the main proceedings be justified by the objective of ensuring the quality of environmental information within the meaning of Article 8(1) of [Directive 2003/4]?
- (7) Does recital 21 of [Directive 2003/4] constitute a legal basis for the release of data relating to the location of permanent sample plots for the statistical forest inventory?’

Consideration of the questions referred

The first question

- 17 By its first question, the referring court asks, in essence, the Court of Justice whether Article 2(1)(a) or (b) of Directive 2003/4 must be interpreted as meaning that the coordinates for locating permanent sample plots used to draw up a national statistical forest inventory constitute environmental information within the meaning of either of those provisions.
- 18 According to Article 2(1)(a) of Directive 2003/4, the concept of environmental information means all information relating to ‘the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites[,] ... biological diversity and its components ... and the interaction among these elements’.
- 19 It is apparent from the order for reference that the permanent sample plots, the location coordinates of which are requested by the applicants in the main proceedings, are sampling units used for the periodic collection of data with a view to drawing up, by extrapolation, statistical reports on forest stands in Estonia and on land use and development. Those sample plots are located on the sides of 64-hectare square plots, chosen for their representative nature of the state of the forest and soils.
- 20 As indicated by the interested parties which have submitted comments in the course of the present proceedings, it should be noted that the data collected from the permanent sample plots constitute environmental information within the meaning of Article 2(1)(a) of Directive 2003/4, in that they relate to the state of the environment and, more particularly, to the state of the soil, natural sites and biological diversity, within the meaning of that provision.
- 21 Contrary to what the Estonian Government and the Environment Agency maintain, the same applies to the coordinates for locating those permanent sample plots, which are essential for interpreting the data collected from those sample plots and are therefore inseparable from them.
- 22 Since they constitute environmental information within the meaning of Article 2(1)(a) of Directive 2003/4, those location coordinates cannot, by contrast, be regarded as also falling within the scope of Article 2(1)(b) of that directive, which concerns factors which affect or are likely to affect the elements of the environment referred to in Article 2(1)(a), those two provisions being mutually exclusive.
- 23 It follows from the foregoing that the answer to the first question is that Article 2(1)(a) of Directive 2003/4 must be interpreted as meaning that the coordinates for locating permanent sample plots used for the periodic collection of data with a view to drawing up a national statistical forest inventory constitute, together with the data collected from those sample plots, from which they are inseparable, environmental information within the meaning of that provision.

The second question

- 24 By its second question, the referring court asks, in essence, the Court of Justice whether point (d) of the first subparagraph of Article 4(1) and points (a), (b) and (h) of the first subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as meaning that an administrative authority

may, on the basis of one or other of the exceptions provided for in that provision, refuse to disclose to the public the coordinates for the location of permanent sample plots used to draw up a national statistical forest inventory.

- 25 The European Commission submits that the questions raised in the context of the second question are inadmissible in so far as they concern the interpretation of the exceptions provided for in points (a) and (b) of the first subparagraph of Article 4(2) of Directive 2003/4, relating to environmental information the disclosure of which would undermine, respectively, the confidentiality of the deliberations of public authorities and the international relations of the Member States.
- 26 According to settled case-law, references to the Court for a preliminary ruling enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court for a preliminary ruling only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 62 and the case-law cited).
- 27 It should also be noted that, where it is not obvious that the interpretation of a provision of EU law bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that provision to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions raised (see, to that effect, judgment of 21 December 2023, *BMW Bank and Others*, C-38/21, C-47/21 and C-232/21, EU:C:2023:1014, paragraph 114 and the case-law cited).
- 28 It is apparent from the reference for a preliminary ruling that the dispute in the main proceedings concerns the refusal of access to a number of associations active in the field of environmental protection to the coordinates for the location of the permanent sample plots used for the collection of data for drawing up a national statistical forest inventory in Estonia and that, in the course of that dispute, the scope of a number of the exceptions to the right of access to environmental information provided for in Directive 2003/4 is being inter alia debated.
- 29 In that context, the fact that, in the Commission's view, the location data the disclosure of which is at issue in the main proceedings clearly do not fall within the scope of the exceptions provided for in points (a) and (b) of the first subparagraph of Article 4(2) of Directive 2003/4 is not such as to rebut the presumption that the question referred is relevant, but relates to the analysis of the merits of the arguments at issue.
- 30 It follows that the second question is admissible in its entirety.
- 31 As regards the answer to be given to that question, it should be recalled at the outset that, in adopting Directive 2003/4, the legislature intended to ensure the compatibility of EU law with the Aarhus Convention by providing for a general scheme to ensure that any applicant within the meaning of Article 2(5) of that directive has a right of access to environmental information held by or on behalf of the public authorities, without having to state an interest (see, to that effect, judgments of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 31, and of 20 January 2021, *Land Baden-Württemberg (Internal communications)*, C-619/19, EU:C:2021:35, paragraph 28).

- 32 Article 1 of Directive 2003/4 states, in particular, that it seeks to ensure the right of access to environmental information held by public authorities and to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public (judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 39).
- 33 However, the EU legislature provided that the Member States may establish exceptions to the right of access to environmental information in the cases listed exhaustively in Article 4 of that directive, as shown in recital 16 of that directive. In so far as such exceptions have in fact been transposed into national law, it is permissible for the public authorities to rely upon them in order to refuse access to some of that information (see, to that effect, judgment of 20 January 2021, *Land Baden-Württemberg (Internal communications)*, C-619/19, EU:C:2021:35, paragraph 31).
- 34 As is apparent from the scheme of Directive 2003/4 and, in particular, from the second subparagraph of Article 4(2), the right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information only in a few specific and clearly defined cases. Exceptions to the right of access must therefore be interpreted restrictively and the public interest served by the disclosure must, in each specific case, be weighed against the interest served by the refusal of disclosure, except in the situations provided for in the third sentence of the second subparagraph of Article 4(2) of Directive 2003/4 on information relating to emissions into the environment (see, to that effect, judgment of 20 January 2021, *Land Baden-Württemberg (Internal communications)*, C-619/19, EU:C:2021:35, paragraph 33 and the case-law cited).
- 35 Implementation of the exceptions provided for in Article 4(1) and (2) of Directive 2003/4 presupposes, moreover, that disclosure to the public of the information requested is such as to specifically and actually undermine the interests protected by that directive, the risk of that interest being undermined having to be reasonably foreseeable and not merely hypothetical (see, to that effect, judgment of 20 January 2021, *Land Baden-Württemberg (Internal communications)*, C-619/19, EU:C:2021:35, paragraph 69).
- 36 It is in the light of those considerations that the question referred, divided into four sub-questions, must be answered.
- 37 The referring court asks, in the first place, whether disclosure of the coordinates for the location of the permanent sample plots used for the periodic collection of data with a view to drawing up a national statistical forest inventory may be refused on the basis of point (d) of the first subparagraph of Article 4(1) of Directive 2003/4, which allows Member States to refuse a request for environmental information relating to documents in the course of completion or to unfinished documents or data.
- 38 Although the concepts of ‘material in the course of completion’ and ‘unfinished documents or data’ are not defined by that directive, it is apparent from the explanations relating to Article 4 of the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information presented by the Commission on 29 June 2000 (COM(2000) 402 final) (OJ 2000 C 337 E, p. 156) that the purpose of that exception is to meet the need of the public authorities to have a protected space in which to pursue internal considerations and debates (see, to that effect, judgment of 20 January 2021, *Land Baden-Württemberg (Internal communications)*, C-619/19, EU:C:2021:35, paragraph 44). The Court has also held that, unlike the ground for refusing access provided for in point (e) of the first subparagraph of Article 4(1) of

Directive 2003/4 relating to internal communications, that provided for in point (d) of the first subparagraph of Article 4(1) of the directive relates to the preparation or drafting of documents and is therefore of a temporary nature (see, to that effect, judgment of 20 January 2021, *Land Baden-Württemberg (Internal communications)*, C-619/19, EU:C:2021:35, paragraph 56).

- 39 That interpretation is corroborated by that of Article 4(3)(c) of the Aarhus Convention, which provides for an exception to the right of access to environmental information in relation to documents in the course of completion, and by the explanations contained in the document entitled *The Aarhus Convention: An implementation guide* (second edition, 2014) published by the United Nations Economic Commission for Europe, which, although it has no normative value, is one of the elements that may guide the interpretation of that convention (see, to that effect, judgment of 16 February 2012, *Solvay and Others*, C-182/10, EU:C:2012:82, paragraph 27).
- 40 The location coordinates of permanent sample plots used for the collection of data for drawing up a national statistical forest inventory cannot be regarded as documents in the course of completion or as unfinished documents or data when they relate to the state of the forest on a given date.
- 41 The fact that those sample plots are used to measure developments in the state of forest resources and soils in successive statistical forest inventories or other reports does not call that conclusion into question. To interpret it otherwise would be tantamount to allowing the exception provided for in point (d) of the first subparagraph of Article 4(1) of Directive 2003/4 to be applied without any time limit, even though that exception is, as has been pointed out above, of a temporary nature.
- 42 As regards, in the second place, the ground for refusing access relating to the preservation of the confidentiality of the deliberations of public authorities, provided for in point (a) of the first subparagraph of Article 4(2) of Directive 2003/4, the referring court asks whether the condition that such confidentiality must be provided for in law is satisfied where that confidentiality arises not from specific provisions but from an instrument of a general nature, such as a law on public information or a law on statistics.
- 43 It is clear from the request for a preliminary ruling that, in so doing, that court starts from the premiss that that ground for refusal could apply to information such as the location coordinates of permanent sample plots used to collect data with a view to drawing up a national statistical forest inventory.
- 44 In that regard, it should be borne in mind that the term ‘proceedings’ used in point (a) of the first subparagraph of Article 4(2) of Directive 2003/4 refers to the final stages of the decision-making process of public authorities which are clearly defined as proceedings under national law and the confidentiality of which must be provided for in law (see, to that effect, judgments of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraphs 63 and 64, and of 23 November 2023, *Right to Know*, C-84/22, EU:C:2023:910, paragraph 43).
- 45 In the present case, although they concern the sample plots used for the collection of data with a view to drawing up a national statistical forest inventory and thus have an indirect link with public decision-making in environmental matters, the location coordinates requested by the applicants in the main proceedings do not, as such, relate to the final stages of the decision-making processes in that matter and thus to ‘proceedings’ within the meaning of point (a) of the first subparagraph of Article 4(2) of Directive 2003/4.

- 46 It follows that a request for access to such location coordinates cannot, in any event, fall within the scope of the exception provided for in that provision, without there being any need to consider whether the confidentiality of such information can be regarded as provided for in law, within the meaning of that provision, where it results from a text of general application, such as a law on public information or a law on statistics.
- 47 In the third place, the referring court questions the scope of point (b) of the first subparagraph of Article 4(2) of Directive 2003/4, under which Member States may refuse a request for environmental information the disclosure of which would undermine international relations, public security or national defence. In that regard, it asks, in essence, whether the deterioration in the reliability of the data used as a basis for drawing up such a forest inventory, resulting from the disclosure of those coordinates, is such as to prejudice the international relations of a Member State, within the meaning of that provision.
- 48 Point (b) of the first subparagraph of Article 4(2) of Directive 2003/4 is intended to ensure the compatibility of EU law with Article 4(4)(b) of the Aarhus Convention, according to which the right of access to environmental information may exclude information the disclosure of which would have an ‘adverse effect’ on the international relations, national defence or public security of the State Party concerned.
- 49 It does not follow from the wording of point (b) of the first subparagraph of Article 4(2) of Directive 2003/4, nor from that of point (b) of Article 4(4) of the Aarhus Convention, that the application of that exception presupposes, in all cases, that the disclosure of environmental information is, in itself, contrary to an international commitment.
- 50 As has been pointed out in paragraphs 34 and 35 of this judgment, the implementation of that exception is, by contrast, subject to a balancing of the public interest justifying the disclosure of the environmental information at issue against the interest served by the refusal to disclose it, and to a finding that such disclosure is likely to cause actual and concrete harm to the interests protected by Directive 2003/4, the risk of such harm having to be reasonably foreseeable and not merely hypothetical.
- 51 It will be for the referring court to make those assessments in the present case. In that context, it will be for the referring court in particular to ascertain whether any infringement of the Republic of Estonia’s international commitments resulting from the disclosure of the location coordinates at issue in the main proceedings would have adverse consequences which are sufficiently concrete and foreseeable to actually harm its interests or international cooperation in forestry matters, or whether, as the evidence before the Court suggests, such consequences are, in the present case, merely hypothetical.
- 52 In the fourth place, the referring court asks, in essence, whether the disclosure of coordinates for the location of permanent sample plots may fall within the scope of the exception provided for in point (h) of the first subparagraph of Article 4(2) of Directive 2003/4 where disclosure of the information requested would undermine the protection of the environment to which that information relates. More specifically, it asks whether the deterioration in the reliability of the data used as a basis for drawing up such a forest inventory, resulting from the disclosure of those coordinates, is such as to prejudice the protection of the environment, within the meaning of that provision.

- 53 It is clear from the very wording of point (h) of the first subparagraph of Article 4(2) of Directive 2003/4 that, by enacting that exception, the EU legislature authorised the Member States to refrain from disclosing environmental information the dissemination of which would represent a danger to the environment, such as data enabling the location of rare species.
- 54 The same option is available under Article 4(4)(h) of the Aarhus Convention, which provides for the possibility for the States Parties to that convention to refuse requests relating to environmental information the disclosure of which would have adverse effects on the environment to which it relates, such as the breeding sites of rare species.
- 55 In the present case, the Estonian Government and the Environment Agency argue that disclosure of the coordinates for the location of the permanent sample plots would be likely to undermine the representativeness and reliability of the national statistical forest inventory, and therefore the quality of public decision-making in environmental matters. In particular, that disclosure would open the way, in their view, to possible manipulation of statistical data by the various players in the forestry economy, who could, for example, intervene only on plots other than those from which the data are collected, thus contributing to a distorted picture of the state of the forest.
- 56 In so far as it is likely to affect the quality of the drawing up of a national statistical forest inventory, and thus the protection of the environment to which the information requested relates, such a risk is such as to justify the application of the exception provided for in point (h) of the first subparagraph of Article 4(2) of Directive 2003/4.
- 57 The fact that the location of rare species is not at issue is not such as to call that conclusion into question, since point (h) of the first subparagraph of Article 4(2) of Directive 2003/4 refers generally to all cases in which the disclosure of environmental information is liable to undermine the protection of the environment and refers to the protection of the location of rare species only by way of example.
- 58 However, it should be borne in mind that, like all the grounds for refusal of access set out in the first subparagraph of Article 4(1) and the first subparagraph of Article 4(2) of Directive 2003/4, with the exception of the ground referred to in the third sentence of the second subparagraph of Article 4(2) of that directive concerning information relating to emissions into the environment, the implementation of that exception is subject to a balancing by the public authorities, under judicial control, of the public interest served by disclosure against the interest served by refusal to disclose, and to a finding that such disclosure is likely to cause actual and concrete harm to the interests protected by the directive, the risk of such harm having to be reasonably foreseeable and not merely hypothetical.
- 59 Having regard to all the foregoing considerations, the answer to the second question is that Article 4 of Directive 2003/4 must be interpreted as meaning that:
- the coordinates for the location of permanent sample plots used for the periodic collection of data with a view to drawing up a national statistical forest inventory do not constitute documents in the course of completion or unfinished documents or data within the meaning of point (d) of the first subparagraph of paragraph 1 thereof, or, in any event, environmental information the disclosure of which could undermine the confidentiality of the proceedings of public authorities, within the meaning of point (a) of the first subparagraph of paragraph 2 thereof;

- the deterioration in the reliability of the data used as a basis for drawing up such a forest inventory, resulting from the disclosure of those coordinates, is such as to prejudice international relations within the meaning of point (b) of the first subparagraph of paragraph 2 thereof, or the protection of the environment to which the information requested relates, within the meaning of point (h) of the first subparagraph of paragraph 2 thereof, provided that such risks are reasonably foreseeable and not purely hypothetical.

The sixth question

- 60 By its sixth question, the referring court asks, in essence, the Court of Justice whether Article 8(1) of Directive 2003/4 must be interpreted as meaning that an administrative authority may, on the basis of that provision, refuse to disclose to the public the coordinates for the location of permanent sample plots used to draw up a national statistical forest inventory.
- 61 Pursuant to Article 8(1) of Directive 2003/4, ‘Member States shall, so far as is within their power, ensure that any information that is compiled by them or on their behalf is up to date, accurate and comparable’.
- 62 It is clear from the wording of that provision that it merely sets out a requirement for the quality of environmental information. It cannot, on its own, serve as a basis for refusing to grant a request for environmental information since, as has been indicated in paragraph 33 of this judgment, the exceptions to the right of access to such information are exhaustively listed in Article 4 of that directive.
- 63 Article 8(1) of Directive 2003/4 does not therefore set out any grounds for exception to the right of access to environmental information in addition to those set out in Article 4 of that directive.
- 64 However, it is for the public authorities to take account of the requirement as to the quality of environmental information set out in Article 8(1) of Directive 2003/4 in determining whether disclosure of environmental information is likely to harm any of the interests referred to in Article 4(2) of Directive 2003/4, and more particularly the protection of the environment to which it relates, within the meaning of point (h) of the first subparagraph of Article 4(2) of that directive.
- 65 It follows from the foregoing that the answer to the sixth question is that Article 8(1) of Directive 2003/4 must be interpreted as meaning that an administrative authority cannot refuse to disclose to the public the coordinates for the location of permanent sample plots used to draw up a national statistical forest inventory solely on the basis of that provision.

The third to fifth questions

- 66 By its third to fifth questions, which it is appropriate to consider together, the referring court asks, in essence, whether, if the answer to the first question is in the negative, the coordinates for locating the permanent sample plots used to draw up a national statistical forest inventory fall within the scope of the information referred to in Article 2(1)(b) of Directive 2003/4, requests for which must be dealt with in accordance with Article 8(2) of that directive. If the answer is in the affirmative, that court also asks the Court of Justice whether such data constitute information relating to measurement procedures within the meaning of Article 8(2) and, if so, whether there

are important reasons under national law for withholding them from public access and whether other measures, such as making them available to research and monitoring bodies, may mitigate the refusal to disclose them.

- 67 It follows from the answer to the first question that the coordinates for the location of permanent sample plots used for the collection of data with a view to drawing up a national statistical forest inventory constitute environmental information within the meaning of Article 2(1)(a) of Directive 2003/4 and do not fall within the scope of Article 2(1)(b) of that directive, to which Article 8(2) thereof refers. In view of that answer, there is no need to answer the third to fifth questions.

The seventh question

- 68 By its seventh and final question, the referring court asks the Court of Justice, in essence, whether recital 21 of Directive 2003/4 may serve as an autonomous legal basis for the communication to the public of the coordinates for the location of permanent sample plots used for the collection of data with a view to drawing up a national statistical forest inventory.
- 69 Under recital 21 of Directive 2003/4, with the aim of raising awareness of environmental protection, ‘public authorities should, as appropriate, make available and disseminate information on the environment which is relevant to their functions’.
- 70 Since the recitals of a directive have only interpretative value in relation to the provisions of that directive (see, to that effect, judgment of 19 December 2019, *Puppinck and Others v Commission*, C-418/18 P, EU:C:2019:1113, paragraph 76), recital 21 of Directive 2003/4 cannot serve as an autonomous legal basis for an obligation of access to environmental information or of dissemination to the public of such information distinct from obligations laid down in Articles 3 and 7 of that directive.
- 71 It follows from the foregoing that the answer to the seventh question is that recital 21 of Directive 2003/4 cannot serve as an autonomous legal basis for the communication to the public of the coordinates for the location of permanent sample plots used for the collection of data with a view to drawing up a national statistical forest inventory.

Costs

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

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

1. Article 2(1)(a) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC

must be interpreted as meaning that the coordinates for locating permanent sample plots used for the periodic collection of data with a view to drawing up a national statistical forest inventory constitute, together with the data collected from those sample plots, from which they are inseparable, environmental information within the meaning of that provision.

2. Article 4 of Directive 2003/4

must be interpreted as meaning that:

- the coordinates for the location of permanent sample plots used for the periodic collection of data with a view to drawing up a national statistical forest inventory do not constitute documents in the course of completion or unfinished documents or data within the meaning of point (d) of the first subparagraph of paragraph 1 thereof, or, in any event, environmental information the disclosure of which could undermine the confidentiality of the proceedings of public authorities, within the meaning of point (a) of the first subparagraph of paragraph 2 thereof;**
- the deterioration in the reliability of the data used as a basis for drawing up such a forest inventory, resulting from the disclosure of those coordinates, is such as to prejudice international relations within the meaning of point (b) of the first subparagraph of paragraph 2 thereof, or the protection of the environment to which the information requested relates, within the meaning of point (h) of the first subparagraph of paragraph 2 thereof, provided that such risks are reasonably foreseeable and not purely hypothetical.**

3. Article 8(1) of Directive 2003/4

must be interpreted as meaning that an administrative authority cannot refuse to disclose to the public the coordinates for the location of permanent sample plots used to draw up a national statistical forest inventory solely on the basis of that provision.

4. Recital 21 of Directive 2003/4

must be interpreted as meaning that it cannot serve as an autonomous legal basis for the communication to the public of the coordinates for the location of permanent sample plots used for the collection of data with a view to drawing up a national statistical forest inventory.

[Signatures]