JUDGMENT OF THE COURT (Sixth Chamber)
17 June 1998 *

In Case C-321/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Schleswig-Holsteinisches Oberverwaltungsgericht (Germany) for a preliminary ruling in the proceedings pending before that court between

Wilhelm Mecklenburg

and

Kreis Pinneberg — Der Landrat,

intervening party: **Der Vertreter des öffentlichen Interesses, Kiel,**

on the interpretation of Articles 2(a) and 3(2), third indent, of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56),

* Language of the case: German.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, R. Schintgen (Rapporteur), G. F. Mancini, J. L. Murray and G. Hirsch, Judges,

Advocate General: A. La Pergola,
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Mecklenburg, by G. Winter, Professor at the University of Bremen,

— Kreis Pinneberg — Der Landrat, by K. Lehming, Rechtsanwalt, Pinneberg,

— the Commission of the European Communities, by G. zur Hausen, Legal Adviser, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Mecklenburg, represented by G. Winter, the German Government, represented by D. Sellner, Rechtsanwalt, Bonn, assisted

by E. Meyer-Rutz, Ministerialrat at the Federal Ministry of the Environment, and the Commission, represented by G. zur Hausen, at the hearing on 13 November 1997,

after hearing the Opinion of the Advocate General at the sitting on 15 January 1998,

gives the following

Judgment

1 By order of 10 July 1996, received at the Court on 1 October 1996, the Schleswig-Holsteinisches Oberverwaltungsgericht (Higher Administrative Court, Schleswig-Holstein) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions concerning the interpretation of Articles 2(a) and 3(2), third indent, of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56, hereinafter 'the directive').

2 The questions arose in an action brought by Mr Mecklenburg against Kreis Pinneberg — Der Landrat (hereinafter 'Kreis Pinneberg') seeking to obtain a copy of the statement of views submitted by the competent countryside protection authority in connection with planning approval for the construction of a road section known as the 'western bypass'.

Legal background

3 Article 1 of the directive states that its object 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 that information should be made available.'

4 Article 2 provides:

'For the purposes of this directive:

(a) "information relating to the environment" shall mean any available information in written, visual, aural or database form on the state of water, air, soil, fauna, flora, land, natural sites, and on activities (including those which give rise to nuisances such as noise) or measures adversely affecting, or likely so to affect these, and on activities or measures designed to protect these, including administrative measures and environmental management programmes;

...'.

5 Article 3(2) of the directive provides:

'Member States may provide for a request for such information 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,

...'.

6 The directive was transposed into German law by the Umweltinformationsgesetz (Law on information on the environment, hereinafter 'the UIG'), which was adopted on 8 July 1994 and came into effect on 16 July 1994.

7 Paragraph 3(2) of the UIG reads as follows:

'Any data available in written or visual form or contained in databanks which concerns the following shall be regarded as information relating to the environment:

1. the state of water, air, soil, fauna and flora and natural sites,

2. activities, including those which give rise to nuisances such as noise, or measures which affect them or are likely to affect them,

3. activities or measures designed to protect such sectors of the environment, including administrative measures and environmental management programmes.'

8 Paragraph 7(1) of the UIG provides as follows:

'(1) There shall be no right [to freedom of access to information on the environment]

1. where disclosure of the information concerned would affect international relations, the national defence or the confidentiality of the proceedings of public authorities or where it would create a serious risk for public security, or

2. during the course of legal proceedings, criminal enquiries or an administrative procedure, as regards information received by the authorities in the course of such proceedings, or

3. where there is reason to fear that disclosure of the information may have a serious or long-term effect on aspects of the environment, within the meaning

of Paragraph 3(2)(1), or undermine administrative measures, within the meaning of Paragraph 3(2)(3).'

The facts

9 Relying on the directive, Mr Mecklenburg requested the town of Pinneberg on 1 January 1993 and Kreis Pinneberg on 18 March 1993 to send him a copy of the statement of views submitted by the competent countryside protection authority in connection with planning approval for the construction of the 'western bypass'.

10 By decision of 17 May 1993 Kreis Pinneberg rejected his request on the grounds that the authority's statement of views was not 'information relating to the environment' within the meaning of Article 2(a) of the directive because it was merely an assessment of information already available to him and because, in any event, the criteria for refusal set out in Article 3(2), third indent, of the directive applied, since a development consent procedure must be regarded as 'preliminary investigation proceedings'.

11 The administrative appeal lodged by Mr Mecklenburg was rejected by Kreis Pinneberg by decision of 3 September 1993.

12 On 4 October 1993 he brought an action against those decisions before the Schleswig-Holsteinisches Verwaltungsgericht, claiming that the authority's statement of views constituted an administrative measure and that in any event its

evaluation of the information in its possession did not detract from its nature as 'information relating to the environment'. He added that development consent proceedings did not constitute 'preliminary investigation proceedings', so that the third indent of Article 3(2) of the directive was not applicable.

13 On 30 June 1995 the Schleswig-Holsteinisches Verwaltungsgericht dismissed the action on the ground that the information relating to the environment sought by Mr Mecklenburg was covered by the confidentiality of the proceedings of public authorities within the meaning of Paragraph 7(1)(1) of the UIG.

14 On 27 October 1995 he appealed against that decision to the Schleswig-Holsteinisches Oberverwaltungsgericht.

15 That court expressed the view, in the order for reference, that the statement of views which Mr Mecklenburg sought to obtain constituted an 'administrative measure for the protection of the environment' within the meaning of Article 2(a) of the directive. Since it had a measure of doubt on the matter, it decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Does the statement of views given in development consent proceedings by a subordinate countryside protection authority participating in those proceedings as a representative of a public interest constitute an administrative measure designed to protect the environment within the meaning of Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment?

(2) Are the proceedings of an administrative authority within the meaning of Paragraph 7(1)(2) of the Umweltinformationsgesetz (Law on information on

the environment) "preliminary investigation proceedings" within the meaning of the third indent of Article 3(2) of that directive?'

First question

16 The first question asks in essence whether Article 2(a) of the directive is to be interpreted as covering a statement of views given in development consent proceedings by a countryside protection authority participating in those proceedings.

17 The Commission has pointed out that for the purposes of defining the scope of the directive the phrase 'environmental management' (*zum Umweltschutz*) used in Article 2(a) of the directive applies solely to 'programmes', so that it is not correct to speak, as the referring court has done, of 'an administrative measure for environmental management'. However, it considers that the statement of views provided by the countryside protection authority must be understood as being an 'administrative measure designed to protect the environment' within the meaning of the directive.

18 The parties to the main proceedings both proceed to analyse the term 'measure' in the light of German law, and disagree as to whether a statement of views by an administrative authority, such as that at issue in the main proceedings, is an act linked to an individual case directed towards a specific aim and having determinative effects, the conditions to be satisfied in order for the term to apply in national law.

19 It must be noted in the first place that Article 2(a) of the directive includes under 'information relating to the environment' any information on the state of the

various aspects of the environment mentioned therein as well as on activities or measures which may adversely affect or protect those aspects, 'including administrative measures and environmental management programmes'. The wording of the provision makes it clear that the Community legislature intended to make that concept a broad one, embracing both information and activities relating to the state of those aspects.

20 Secondly, the use in Article 2(a) of the directive of the term 'including' indicates that 'administrative measures' is merely an example of the 'activities' or 'measures' covered by the directive. As the Advocate General pointed out in paragraph 15 of his Opinion, the Community legislature purposely avoided giving any definition of 'information relating to the environment' which could lead to the exclusion of any of the activities engaged in by the public authorities, the term 'measures' serving merely to make it clear that the acts governed by the directive included all forms of administrative activity.

21 In order to constitute 'information relating to the environment for the purposes of the directive', it is sufficient for the statement of views put forward by an authority, such as the statement concerned in the main proceedings, to be an act capable of adversely affecting or protecting the state of one of the sectors of the environment covered by the directive. That is the case, as the referring court mentioned, where the statement of views is capable of influencing the outcome of the development consent proceedings as regards interests pertaining to the protection of the environment.

22 Accordingly, the reply to the first question is that Article 2(a) of the directive is to be interpreted as covering a statement of views given by a countryside protection authority in development consent proceedings if that statement is capable of influencing the outcome of those proceedings as regards interests pertaining to the protection of the environment.

Second question

23 The second question asks in essence whether the phrase 'preliminary investigation proceedings' in Article 3(2), third indent, of the directive is to be interpreted as including the proceedings of an administrative authority, such as those referred to in Paragraph 7(1)(2) of the UIG, which is restricted to preparing the way for an administrative measure.

24 It should be noted that under the third indent of Article 3(2) of the directive national law may permit requests for information relating to 'matters which are, or have been, *sub judice*, or under enquiry (including disciplinary enquiries), or which are the subject of preliminary investigation proceedings'.

25 Since that is a derogation from the general rules laid down by the directive, Article 3(2), third indent, 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. Furthermore, the scope of the derogations which it lays down must be determined in the light of the aims pursued by the directive (Case C-335/94 *Mrozek and Jäger* [1996] ECR I-1573, paragraph 9).

26 As far as the aims of the directive are concerned, the principle of freedom of access to information is laid down in Article 1 thereof. The seventh recital in the preamble to the directive emphasises the fact that the refusal to comply with a request for information relating to the environment may, however, be justified 'in certain specific and clearly defined cases'.

27 As regards the interests the protection of which the third indent of Article 3(2) of the directive serves to secure, the exceptions provided for therein relate to information held by a public authority relating, first, to matters which are the subject of legal proceedings, next, to matters which are the subject of enquiries (including disciplinary enquiries) and, lastly, to matters which are the subject of 'preliminary investigation proceedings'. It is thus clear, as the Advocate General pointed out in paragraph 23 of his Opinion, that that exception covers exclusively proceedings of a judicial or quasi-judicial nature, or at least proceedings which will inevitably lead to the imposition of a penalty if the offence (administrative or criminal) is established. Viewed in that context, therefore, 'preliminary investigation proceedings' must refer to the stage immediately prior to the judicial proceedings or the enquiry.

28 That interpretation is borne out by the history of the directive. Article 8(1) of the proposal for a directive submitted by the Commission on 31 October 1988 (OJ 1988 C 335, p. 5) allowed for an exception to the right of access to information where exercise of that right might be prejudicial 'to the secrecy of procedures brought before the courts'. It was as a result of the opinion given by the Economic and Social Committee on 31 March 1989 (OJ 1989 C 139, p. 47, point 2.6.1), which proposed the inclusion of a reference to the confidentiality of 'investigative proceedings,' that the term 'preliminary investigation proceedings' was added to the proposal for a directive.

29 Lastly, it is settled case-law that 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 (see to that effect Case C-296/95 *EMU Tabac* [1998] ECR I-1605, paragraph 36). The German word at issue, *Vorverfahren*, should therefore be compared, not only with the terms *instruction préliminaire*, *azione investigativa preliminare*, *investigación preliminar* and *investigaçao preliminar* in French, Italian, Spanish and Portuguese, but also with 'preliminary investigation proceedings' in the English version,

opsporingsonderzoeken in Dutch and *indledende undersogelser* in Danish. As the Advocate General pointed out in paragraph 25 of his Opinion, comparison of the various language versions shows that the 'preliminary investigation proceedings' referred to by the directive must be linked to the activities which precede contentious or quasi-contentious proceedings and which arise from the need to obtain proof or to investigate a matter before the procedural phase properly so-called has even begun. However, 'preliminary investigation proceedings' does not cover all acts of the administration which are open to challenge in the courts.

30 In the light of those considerations the reply to the second question is that the term 'preliminary investigation proceedings' in the third indent of Article 3(2) of the directive must be interpreted as including 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 to investigate a matter prior to the opening of the actual procedure.

Costs

31 The costs incurred by the German Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions submitted to it by the Schleswig-Holsteinisches Oberverwaltungsgericht by order of 10 July 1996, hereby rules:

1. **Article 2(a) of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment is to be interpreted as covering a statement of views given by a countryside protection authority in development consent proceedings if that statement is capable of influencing the outcome of those proceedings as regards interests pertaining to the protection of the environment.**

2. **The term 'preliminary investigation proceedings' in the third indent of Article 3(2) of the directive is to be interpreted as including an administrative procedure such as that referred to in Paragraph 7(1)(2) of the Umweltinformationsgesetz, 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 to investigate a matter prior to the opening of the actual procedure.**

Ragnemalm Schintgen Mancini

Murray Hirsch

Delivered in open court in Luxembourg on 17 June 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber