Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

23 November 2016*

(Appeal — Access to documents of the institutions — Regulation (EC) No 1049/2001 — Environment — Aarhus Convention — Regulation (EC) No 1367/2006 — Article 6(1) — Risk of an adverse effect on the commercial interests of a natural or legal person — Concept of 'information relating to emissions into the environment' — Documents relating to the authorisation procedure for an active substance contained in plant protection products — Active substance glyphosate)

In Case C-673/13 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 17 December 2013,

European Commission, represented by B. Smulders, P. Ondrůšek, P. Oliver, and by L. Pignataro-Nolin, acting as Agents, with an address for service in Luxembourg,

appellant,

supported by:

American Chemistry Council Inc. (ACC),

CropLife America Inc.,

National Association of Manufacturers of the United States of America (NAM),

established in Washington (United States), represented by M. Abenhaïm, avocat, K. Nordlander, advokat, and P. Harrison, Solicitor,

CropLife International AISBL (CLI), established in Brussels, represented by D. Abrahams, Barrister, R. Cana and E. Mullier, avocats, and A. Patsa, dikigoros,

European Chemical Industry Council (Cefic),

European Crop Protection Association (ECPA),

established in Brussels, represented by I. Antypas and D. Waelbroeck, avocats, and D. Slater, Solicitor,

European Crop Care Association (ECCA), established in Brussels, represented by S. Pappas, dikigoros,

* Language of the case: English.

Federal Republic of Germany, represented by T. Henze and A. Lippstreu, acting as Agents,

interveners in the appeal,

the other parties to the proceedings being:

Stichting Greenpeace Nederland, established in Amsterdam (Netherlands),

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

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

applicants at first instance,

supported by:

Kingdom of Sweden, represented by E. Karlsson, L. Swedenborg, A. Falk, U. Persson, C. Meyer-Seitz and N. Otte Widgren, acting as Agents,

intervener in the appeal,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, A. Tizzano (Rapporteur), Vice-President of the Court, M. Berger, E. Levits and F. Biltgen Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 February 2016,

after hearing the Opinion of the Advocate General at the sitting on 7 April 2016,

gives the following

Judgment

1 By its appeal, the European Commission asks the Court to set aside the judgment of the General Court of the European Union of 8 October 2013, *Stichting Greenpeace Nederland and PAN Europe* v *Commission* (T-545/11, 'the judgment under appeal', EU:T:2013:523), by which that Court partially annulled the Commission decision of 10 August 2011 refusing access to volume 4 of the Draft Assessment Report issued by the Federal Republic of Germany, as rapporteur Member State for the active substance glyphosate, under Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) ('the decision at issue').

Legal context

The Aarhus Convention

2 Article 4 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, 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'), entitled 'Access to environmental information', provides as follows:

'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 ...

...

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

...

(d) The confidentiality of commercial and industrial information, where such confidentiality is protected by law in order to protect a legitimate economic interest. Within this framework, information on emissions which is relevant for the protection of the environment shall be disclosed;

...

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.

...'

EU law

Rules on access to documents

3 Recital 4 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43) states:

'The purpose of this regulation is to give the fullest possible effect to the right of public access to documents ...'

4 Article 4(2) of that regulation provides as follows:

'The institutions shall refuse access to a document where disclosure would undermine the protection of:

— commercial interests of a natural or legal person, including intellectual property,

...

unless there is an overriding public interest in disclosure.'

5 Recitals 2 and 15 of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264, p. 13) provide as follows:

'(2) The Sixth Community Environment Action Programme ... stresses the importance of providing adequate environmental information and effective opportunities for public participation in environmental decision-making, thereby increasing accountability and transparency of decision-making and contributing to public awareness and support for the decisions taken. ...

...

(15) Where Regulation [No 1049/2001] provides for exceptions, these should apply subject to any more specific provisions in this regulation concerning requests for environmental information. The grounds for refusal as regards access to environmental information should be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions in the environment. ...'

6 Article 1(1) of that regulation provides as follows:

'1. The objective of this regulation is to contribute to the implementation of the obligations arising under [the Aarhus Convention], by laying down rules to apply the provisions of the convention to Community institutions and bodies, in particular by:

...

(b) ensuring that environmental information is progressively made available and disseminated to the public in order to achieve its widest possible systematic availability and dissemination. To that end, the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted;

...'

7 Article 2(1) of that regulation provides as follows:

'For the purpose of this regulation:

...

(d) "environmental information" means any information in written, visual, aural, electronic or any other material form on:

(i) 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;

(ii) 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 point (i);

...'

8 Article 3 of the regulation is worded as follows:

‘Regulation No [1049/2001] shall apply to any request by an applicant for access to environmental information held by Community institutions and bodies ...’

9 Article 6(1) of Regulation No 1367/2006 provides as follows:

‘As regards Article 4(2), first and third indents, of Regulation No [1049/2001] ... an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. ...’

Rules on authorisation to place plant protection products on the market and the inclusion of active substances

10 Commission Regulation (EEC) No 3600/92 of 11 December 1992 laying down the detailed rules for the implementation of the first stage of the programme of work referred to in Article 8(2) of Directive 91/414 (OJ 1992 L 366, p. 10) lays down the detailed rules for the implementation of the first stage of the multiannual programme of work for the gradual examination of active substances available on the market two years after the date of notification of Directive 91/414. It is apparent from Annex I to that regulation that glyphosate was covered by the first phase of that programme of work. It was for the rapporteur Member State to prepare a draft assessment report, in accordance with Article 7(1) of that regulation.

11 Pursuant to Commission Regulation (EC) No 933/94 of 27 April 1994 laying down the active substances of plant protection products and designating the rapporteur Member States for the implementation of Regulation No 3600/92 (OJ 1994 L 107, p. 8), the Federal Republic of Germany was designated as rapporteur Member State for glyphosate.

12 Finally, by virtue of Article 1 and Annex I to Commission Directive 2001/99/EC of 20 November 2001 amending Annex I to Directive 91/414 to include the active substances glyphosate and thifensulfuron-methyl (OJ 2001 L 304, p. 14), glyphosate was added to Annex I to Directive 91/414, the inclusion expiring on 30 June 2012. Subsequently, Commission Directive 2010/77/EU of 10 November 2010 amending Directive 91/414 as regards the expiry dates for inclusion in Annex I of certain active substances (OJ 2010 L 293, p. 48) extended the period for the inclusion of glysophate until 31 December 2015.

Rules applicable to industrial emissions

13 Article 2(3) and (5) of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26) provides as follows:

‘For the purposes of this Directive:

...

(3) “installation” shall mean a stationary technical unit where one or more activities listed in Annex I are carried out, and any other directly associated activities which have a technical connection with the activities carried out on that site and which could have an effect on emissions and pollution;

...

(5) “emission” means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into air, water or land;

...'

14 Article 1 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17) provides as follows:

'This Directive lays down rules on integrated prevention and control of pollution arising from industrial activities. ...'

15 Article 3(3) and (4) of that directive provides as follows:

'For the purposes of this Directive:

...

(3) "installation" means a stationary technical unit within which one or more activities listed in Annex I or in Part 1 of Annex VII are carried out, and any other directly associated activities on the same site which have a technical connection with the activities listed in those annexes and which could have an effect on emissions and pollution;

(4) "emission" means the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into air, water or land;

...'

Background to the dispute

16 On 20 December 2010, Stichting Greenpeace Nederland ('Greenpeace Nederland') and Pesticide Action Network Europe (PAN Europe) made a request, on the basis of Regulation Nos 1049/2001 and 1367/2006 for access to several documents relating to the initial authorisation for the placing of glyphosate on the market as an active substance, granted under Directive 91/414.

17 The following documents were requested:

— a copy of the draft assessment report issued by the rapporteur Member State, namely the Federal Republic of Germany, prior to the initial inclusion of glyphosate in Annex I to Directive 91/414 ('the draft report');

— a complete list of all tests submitted by the applicants which had sought the inclusion of glyphosate in Annex I to Directive 91/414, which was implemented by Directive 2001/99; and

— the full, complete and original test documents supplied by the applicants for the inclusion of glyphosate in Annex I to Directive 91/414 in 2001, in so far as concerns long-term toxicity tests, mutagenicity tests, carcinogenicity tests, neurotoxicity tests and reproduction studies.

18 After seeking the prior agreement of the German authorities, in accordance with Regulation No 1049/2001, the Secretary General of the Commission, by letter of 6 May 2011, granted access to the draft report, with the exception of volume 4 thereof ('the document at issue'), which those authorities refused to disclose. In that regard, the Secretary General explained that consultation with the German authorities was still ongoing and that a decision would be taken in due course.

19 By the decision at issue, the Secretary General of the Commission ultimately refused access to the document at issue, relying on the Federal Republic of Germany's refusal.

20 In support of that decision, the Secretary General of the Commission stated that that Member State objected to the disclosure of that document on the basis of the first indent Article 4(2) of Regulation No 1049/2001, on the ground that that document contained confidential information relating to the intellectual property rights of the applicants which had sought the inclusion of glyphosate in Annex I to Directive 91/414, namely the detailed chemical composition of the active substance produced by each of the applicants, detailed information on the manufacturing process for that substance, information on the impurities, the composition of the finished products and information on the contractual relations between the various applicants.

21 After noting that, according to the German authorities, there was no overriding public interest, as provided for in Article 4(2) of Regulation No 1049/2001, justifying disclosure of the document at issue, the Secretary General of the Commission examined whether such an overriding public interest could be invoked in the light of Regulation No 1367/2006. In that regard, the Secretary General noted, first, that Article 6(1) of that regulation, under which an overriding public interest in disclosure is to be deemed to exist where the information requested relates to emissions into the environment, did not apply to the document at issue, since it did not contain any such information.

22 Secondly, the Secretary General of the Commission stated that the information in question concerned the glyphosate production process of the applicants which had sought the inclusion of glyphosate in Annex I to Directive 91/414. On balance, the Secretary General considered that the need to protect the intellectual property rights of those applicants outweighed the public interest in disclosure of the information. In the Commission's view, such disclosure would, in the present case, allow competing undertakings to copy the production processes of the applicants which had sought the inclusion of glyphosate, which would lead to considerable losses for those applicants and leave their commercial interests and intellectual property rights unprotected. On the other hand, the public interest in disclosure of the information had already been taken into account, since the possible effects of glyphosate emissions were shown in other parts of the draft report that had already been made public, in particular as regards relevant impurities and metabolites. As regards the information relating to non-relevant impurities that was included in the document at issue, the Commission considered that it related to elements which do not present risks to health or the environment but which make it possible to reconstitute the manufacturing process of each product.

23 Furthermore, according to the Secretary General of the Commission, it was apparent from the procedure by which glyphosate had been included in Annex I to Directive 91/414 that the requirements laid down by Regulation No 1367/2006 concerning public disclosure of information on the environmental effects of that substance had been taken into account. In those circumstances, protection of the interests of the manufacturers of that substance had to prevail.

24 The Secretary General of the Commission drew the conclusion that there was no evidence of an overriding public interest in disclosure.

The judgment under appeal

25 By application lodged at the Registry of the General Court on 14 October 2011, Greenpeace Nederland and PAN Europe brought an action for annulment of the decision at issue. They raised three pleas in law in support of that action.

26 By the first plea in law, they submitted that Regulation No 1049/2001 does not confer a right of veto upon a Member State and that the Commission may decide not to follow the Member State's opinion regarding the application of an exception provided for by Article 4(2) of that regulation. By their second plea in law, the applicants at first instance maintained that the exception to the right of access designed to protect the commercial interests of a natural or legal person, laid down in the first indent of Article 4(2) of that regulation must, in the present case, be discounted. According to Greenpeace

Nederland and PAN Europe, there was an overriding public interest in disclosure of the information requested since it related to emissions into the environment within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006. Lastly, by their third plea in law, Greenpeace Nederland and PAN Europe argued that the decision at issue was not in accordance with Article 4(2) of Regulation No 1049/2001 or Article 4 of the Aarhus Convention, on the ground that the Commission did not evaluate the actual risk of damage to the commercial interests invoked.

27 The General Court upheld the second plea in law and, without ruling on the other two pleas in law, annulled the decision at issue, in so far as it refuses access to those parts of the document at issue containing information on emissions into the environment, namely, first, the identity and the quantity of all of the impurities present in the active substance of which each operator gave notification, secondly, the data concerning the impurities present in the various batches, and the minimum, median and maximum quantities of each of those impurities, and, thirdly, the information concerning the composition of the plant protection products developed by the various operators concerned ('the information at issue').

Procedure before the Court and forms of order sought

28 By decision of the President of the Court of 29 April 2014, the Federal Republic of Germany was granted leave to intervene in support of the form of order sought by the Commission.

29 By orders of the President of the Court of 3 March 2015, the American Chemistry Council Inc. (ACC), CropLife America Inc. ('CropLife'), CropLife International AISBL (CLI), the European Chemical Industry Council (Cefic), the European Crop Care Association (ECCA), the European Crop Protection Association (ECPA) and the National Association of Manufacturers of the United States of America (NAM) ('NAM USA') were also granted leave to intervene in support of the form of order sought by the Commission.

30 By order of the President of the Court of 26 June 2015, the Kingdom of Sweden was given leave to intervene in support of the form of order sought by Greenpeace Nederland and PAN Europe.

31 The Commission and the ACC, CropLife, CLI, Cefic, ECCA, ECPA, NAM USA and the Federal Republic of Germany claim that the Court should:

— set aside the judgment under appeal;

— pursuant to Article 61 of the Statute of the Court of Justice of the European Union, either give a final ruling on the first and third pleas in law raised at first instance itself or refer the case back to the General Court for a ruling on those pleas, and

— order Greenpeace Nederland and PAN Europe to pay the costs.

32 Greenpeace Nederland and PAN Europe contend that the Court should dismiss the Commission's appeal and order it to pay the costs.

33 The Kingdom of Sweden asks the Court to dismiss the Commission's appeal.

The appeal

34 In support of its appeal, the Commission relies on a single ground of appeal, alleging that the General Court erred in its interpretation of the term 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006.

35 By the first part of that ground of appeal, the Commission submits that the General Court erred in disregarding the need to ensure the 'internal' consistency of Regulation No 1049/2001.

36 By the second part of that ground of appeal, the Commission maintains, in the alternative, that the General Court failed, for the purposes of the interpretation and application of the exceptions to the right of access laid down by Regulation Nos 1049/2001 and 1367/2006, to take due account of the rules on disclosure specifically laid down by the sector-specific legislation applicable to plant protection products.

37 By the third part of that ground of appeal, the Commission argues, also in the alternative, that the General Court erred in law in disregarding, in paragraphs 44 and 45 of the judgment under appeal, the need to interpret the first sentence of Article 6(1) of Regulation No 1367/2006, in so far as possible, in a manner consistent with the Charter of Fundamental Rights of the European Union, in particular with Articles 16 and 17 thereof, and the Agreement on the Trade Related Aspects of Intellectual Property Rights, which constitutes Annex 1 C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1).

The first part of the single ground of appeal

Arguments of the parties

38 By the first part of the single ground of appeal, the Commission maintains that the General Court erred in disregarding the need to ensure the 'internal' consistency of Regulation No 1049/2001, read in conjunction with Article 6(1) of Regulation No 1367/2006 and Article 4(4) of the Aarhus Convention.

39 Having noted that the first sentence of Article 6(1) of Regulation No 1367/2006 creates an irrebuttable presumption in favour of the disclosure of information covered by the concept of 'information ... [which] relates to emissions into the environment', the Commission argues, in essence, that that concept must be interpreted restrictively in order not to render the interests referred to in Article 339 TFEU and the first indent of Article 4(2) of Regulation No 1049/2001 wholly redundant.

40 In any event, the Commission submits, in essence, that, in order to fall within the scope of that concept, the information in question must satisfy two cumulative conditions, namely: (i) it must relate to emissions emanating from installations such as factories and power stations and (ii) it must concern actual emissions into the environment.

41 As regards the first of those conditions, also relied on by CLI, Cefic, ECPA, and the Federal Republic of Germany, derives from the Aarhus Convention Implementation Guide. In order to define 'emission', the first edition of that guide refers to Directive 96/61. Article 2(5) of that directive defines 'emission' as the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in the installation into the air, water or land, while Article 2(3) of that directive defines 'installation' as a stationary unit where one or more activities listed in Annex I to the directive are carried out. Likewise, the second edition of the Aarhus Convention Implementation Guide is drafted in the same terms and refers to Directive 2010/75, which replaced Directive 96/61, and contains the same definitions of the terms 'emission' and 'installation'. It follows that the concept of 'emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 must be interpreted as being restricted to emissions covered by Directives 96/61 and 2010/75.

42 In that regard, the Federal Republic of Germany, the CLI, Cefic, and ECPA add that that interpretation is confirmed by Article 2(1)(d) of Regulation No 1367/2006 itself, which distinguishes emissions from other releases and discharges. The General Court's interpretation leads to the elimination of that distinction and the view that any environmental information concerns emissions into the environment.

43 As regards the second condition, also referred to by the CLI and Cefic, the Commission maintains that it is not satisfied in the present case. The document at issue does not contain information about the nature and quantity of the actual emissions released into the environment, given that those emissions vary according to the quantities of the product actually used by farmers and to whether the plant protection products contain exactly the same substances as those assessed in the draft assessment report.

44 Moreover, the Commission maintains that the criterion used by the General Court for determining whether information 'relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006, namely whether there is a 'sufficiently direct' link between the information concerned and emissions into the environment, has no legal basis, and that the vague nature of that criterion raises serious problems in terms of legal certainty, which is confirmed by the way in which the General Court applied that criterion in the judgment under appeal. In paragraph 71 of that judgment, the General Court considered that the analytical profile of the batches tested, with the exception of the structural formulas of impurities, related, in a sufficiently direct manner, to emissions into the environment. That statement is not supported by any arguments.

45 Greenpeace Nederland and PAN Europe, supported by the Kingdom of Sweden, dispute the Commission's arguments.

46 To that end, they claim, in essence, first, that since disclosure of environmental information is the guiding rule, the rule laid down in the first sentence of Article 6(1) of Regulation No 1367/2006 and the first subparagraph of Article 4(4)(d) of the Aarhus Convention, under which the protection of commercial interests of a natural or legal person may not be invoked against the disclosure of 'information [which] relates to emissions into the environment', may not be interpreted narrowly.

47 Next, those parties maintain that the Aarhus Convention Implementation Guide provides no support for a restrictive interpretation of the concept of 'emissions into the environment' put forward by the Commission, given that that guide refers only to definition of 'emission' laid down in Directive 96/61 by way of example. In any event, there is nothing in that convention to endorse such an interpretation. They argue that the scope of the convention is not limited to environmental matters concerning industrial installations but applies, expressly and evidently, to all kinds of environmental matters and information.

48 Finally, according to Greenpeace Nederland and PAN Europe, the restriction of the concept of 'information [which] relates to emissions into the environment' to information relating to actual emissions must also be rejected. In that regard, they submit, inter alia, that the information at issue is necessary in order, first, to ascertain the quantities and quality of the glyphosate released into the environment and the quantity of impurities emitted and, secondly, to verify whether the effects of the release of that substance into the environment as a component of a plant protection product have been correctly assessed. Since that information constitutes the basis on which the release of glyphosate into the environment may be authorised, it relates to 'emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006. Consequently, it is not necessary to restrict the concept of 'information [which] relates to emissions into the environment' to information concerning emissions actually released into the environment when the product in question is used.

Findings of the Court

49 In order to rule on the first part of the single ground of appeal, it is necessary to determine whether, as the Commission claims, (i) the concept of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 must be interpreted restrictively, (ii) that concept must be restricted to information relating to emissions emanating from industrial installations such as factories and power stations, (iii) that concept covers only information relating to actual emissions into the environment and, (iv) the General Court erred in law in considering that it is sufficient that information relates 'in a sufficiently direct manner' to emissions into the environment in order for it to fall within the scope of that concept.

– The restrictive interpretation of the concept of 'information ... [which] relates to emissions into the environment'

50 As regards the question whether the concept of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 must be interpreted restrictively, it is, of course, necessary to interpret that concept in a way which does not render Article 339 TFEU and the first indent of Article 4(2) of Regulation No 1049/2001 wholly redundant, in so far as those articles protect professional secrecy and the commercial interests of a particular natural or legal person. The right of access to the documents of the institutions laid down by that regulation is, as the General Court pointed out in paragraph 29 of the judgment under appeal, subject to certain limitations based on grounds of public or private interest, including the protection of the commercial interests of a particular natural or legal person.

51 However, contrary to the Commission's claim, that concept may not be interpreted restrictively.

52 In accordance with the settled case-law of the Court of Justice, Regulation No 1049/2001 is intended, as is apparent from recital 4 and Article 1 thereof, to give the fullest possible effect to the right of public access to documents of the institutions (see, inter alia, judgments of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 69, and 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 28). Likewise, Regulation No 1367/2006 aims, as provided for in Article 1 thereof, to ensure the widest possible systematic availability and dissemination of the environmental information held by the institutions and bodies of the European Union.

53 Therefore, it is only in so far as they derogate from the principle of the widest possible public access to those documents by restricting such access that exceptions to that principle, in particular those provided for in Article 4 of Regulation No 1049/2001, must, according to the Court's settled case-law, be interpreted and applied strictly (see, to that effect, judgments of 21 September 2010, *Sweden and Others* v *API and Commission*, C-514/07 P, C-528/07 P and C-532/07 P, EU:C:2010:541, paragraph 73, and 17 October 2013, *Council* v *Access Info Europe*, C-280/11 P, EU:C:2013:671, paragraph 30). The need for such a restrictive interpretation is, moreover, confirmed by recital 15 of Regulation No 1367/2006.

54 On the other hand, by establishing a presumption that the disclosure of 'information ... [which] relates to emissions into the environment', with the exception of information relating to investigations, is deemed to be in the overriding public interest, compared with the interest in protecting the commercial interests of a particular natural or legal person, with the result that the protection of those commercial interests may not be invoked to preclude the disclosure of that information, the first sentence of Article 6(1) of Regulation No 1367/2006 derogates, as observed by CLI, among others, from the rule requiring the weighing up of the interests laid down in Article 4(2) of Regulation 1049/2001. Nonetheless, the first sentence of Article 6(1) thus allows actual implementation of the

principle that the public should have the widest possible access to information held by the institutions and bodies of the European Union, with the result that a narrow interpretation of that provision cannot be justified.

55 Under those circumstances, the General Court did not err in law, in paragraphs 49 and 53 of the judgment under appeal, in concluding that the first sentence of Article 6(1) of Regulation No 1367/2006 and the concept of 'information ... [which] relates to emissions into the environment' must not be interpreted strictly.

– Restriction of the concept of 'information [which] relates to emissions into the environment' to information relating to emissions emanating from industrial installations

56 As regards the Commission's argument that 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 must be interpreted as being restricted to information concerning emissions emanating from industrial installations such as factories and power stations, it should be pointed out at the outset that, contrary to the claim of that institution, the General Court expressly addressed that argument, in paragraphs 54 and 56 of the judgment under appeal, before dismissing it.

57 As regards the merits of the General Court's assessment, it must indeed be noted that the 2000 edition of the Aarhus Convention Implementation Guide proposed, for the purpose of defining the concept of an 'emission' within the meaning of point (d) of the first subparagraph of Article 4(4) of that convention, to use the definition of that concept set out in Article 2(5) of Directive 96/61 and the 2014 edition of that guide now refers to the definition set out in Article 3(4) of Directive 2010/75, which is identical to the definition provided for by the former directive.

58 It is apparent, in essence, from those directives that 'emissions' within the meaning of those directives are the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in certain industrial installations defined therein into air, water or soil.

59 However, as the General Court was right to observe in paragraph 55 of the judgment under appeal, it is the Court's settled case-law that, while that guide may be regarded as an explanatory document, which may be taken into consideration, if appropriate, along with other relevant material for the purpose of interpreting the Aarhus Convention, the indications contained therein have no binding force and do not have the normative effect of the provisions of that convention (see, inter alia, judgment of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 38 and the case-law cited).

60 First, there is nothing in Regulation No 1367/2006 to support the view that the concept of 'emissions into the environment' within the meaning of the first sentence of Article 6(1) of that regulation must be limited to emissions emanating from certain industrial installations, such as factories and power stations.

61 Nor may that restriction be inferred from the Aarhus Convention, which must be taken into account in interpreting Regulation No 1367/2006, since, as Article 1 thereof provides, the objective of that regulation is to contribute to the implementation of the obligations arising under that convention, by laying down rules to apply the provisions of that convention to EU institutions and bodies.

62 On the contrary, as the Court noted in paragraph 72 of the judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting* (C-442/14), such a restriction would be contrary to the express wording of point (d) of the first subparagraph of Article 4(4) of the Aarhus Convention. That provision states that information on emissions which is relevant for the protection of the environment

must be disclosed. Information concerning emissions emanating from sources other than industrial installations, such as those resulting from the use of plant protection products on plants or soil, are just as relevant to environmental protection as information relating to emissions of industrial origin.

63 Furthermore, restriction of the concept of 'emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 to emissions emanating from certain industrial installations, such as factories and power stations, would be contrary to that regulation's objective of disclosing environmental information as widely as possible (see, by analogy, judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraph 73).

64 Moreover, contrary to the assertion of the Federal Republic of Germany, such a restriction may not be justified by the concern to preserve the consistency of EU law, in particular the consistency between Regulation No 1367/2006 and Directives 96/61 and 2010/75. The restriction, in those directives, of the concept of 'emissions' to those emanating from certain industrial installations is justified by the very objective of those directives, which, as Article 1 of Directive 2010/75 indicates, is precisely to establish rules concerning the integrated prevention and control of pollution arising from industrial activities. By contrast, such a restriction is not justified in the light of the objective of Regulation No 1367/2006, which is, in accordance with Article 1 thereof, to set out rules applicable to access to environmental information held by EU institutions and bodies. Moreover, it should be pointed out that the concept of 'emission' has no single definition under EU law, but varies according to the area in which it is to be applied. Thus, the definition of that concept given by directives 96/61 and 2010/75 differs from the definition laid down, in particular, in Article 2(8) of Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56), or that set out in Article 3(e) of Directive 2001/81/EC of the European Parliament and of the Council of 23 October 2001 on national emission ceilings for certain atmospheric pollutants (OJ 2001 L 309, p. 22).

65 Finally, it must be noted that, contrary to the claim of, among others, CLI, Cefic, ECPA and the Federal Republic of Germany, such a restriction has no basis in Article 2(1)(d)(ii) of Regulation 1367/2006.

66 It is true that that provision, which sets out factors that may fall within the scope of the concept of 'environmental information', appears, at first glance, to distinguish the concept of 'emissions' from those of 'discharges' and 'releases' into the environment, from which it follows, according to the CLI, Cefic, ECPA and the Federal Republic of Germany, that the concept of 'emissions into the environment', within the meaning of the first sentence of Article 6(1) of that regulation, should be limited to emissions emanating from certain industrial installations, excluding other discharges and releases into the environment.

67 However, first, no distinction between the concepts of 'emissions', 'discharges' and 'releases' is made by the Aarhus convention, which merely provides in the first subparagraph of Article 4(4)(d) that the confidentiality of commercial and industrial information may not be invoked against the disclosure of 'information on emissions which is relevant for the protection of the environment' (see judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraph 62).

68 Secondly, such a distinction is irrelevant in the light of the objective of disclosure of environmental information which Regulation No 1367/2006 seeks to attain and would be artificial. Furthermore, those concepts broadly coincide, as shown by the use of the expression 'other releases' in Article 2(1)(d)(ii), in that regulation, from which it follows that emissions and discharges are also releases into the environment (see, by analogy, judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraphs 63 and 65).

69 Accordingly, it is not necessary, for the purposes of interpreting the first sentence of Article 6(1) of Regulation No 1367/2006, to draw a distinction between the concept of 'emissions', and the concepts of 'discharges' and 'releases' into the environment (see, by analogy, judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraph 67).

70 In the light of the above considerations, the General Court did not err in law in considering, in paragraphs 54 to 56 of the judgment under appeal, that the concept of 'information [which] relates to emissions into the environment' within the meaning of that provision is not limited to information concerning emissions emanating from certain industrial installations.

– Restriction of the concept of 'information [which] relates to emissions into the environment' to actual emissions into the environment

71 As regards the Commission's argument that the concept of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 covers only information relating to actual emissions into the environment, which is not the case as regards the information at issue, it must be stressed that, as the Commission submits, that concept does not include information relating to hypothetical emissions.

72 It follows, in essence, from Article 1(1)(b) of that regulation, read in conjunction with Article 2(1)(d) thereof, that the objective of that regulation is to ensure access to information concerning factors, such as emissions affecting or likely to affect elements of the environment, in particular air, water and soil. That is not the case as regards purely hypothetical emissions (see, by analogy, judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraph 80).

73 However, contrary to the Commission's view, that concept cannot be limited to information concerning emissions actually released into the environment when the plant protection product or active substance in question is used on plants or soil, where those emissions depend, inter alia, on the quantities of product actually used by farmers and the exact composition of the final product marketed.

74 Consequently, that concept also covers information on foreseeable emissions into the environment from the plant protection product or active substance in question, under normal or realistic conditions of use of that product or substance, namely the conditions under which the authorisation to place that product or substance on the market was granted and which prevail in the area where that product or substance is intended to be used (see, by analogy, judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraph 78 and 79).

75 Although the placing on the market of a product or substance is not sufficient in general for it to be concluded that that product or substance will necessarily be released into the environment and that information concerning the product or substance relates to 'emissions into the environment', the situation is different as regards a product such as a plant protection product, and the substances which that product contains, which, in the course of normal use, are intended to be released into the environment by virtue of their very function. In that case, foreseeable emissions, under normal or realistic conditions of use, from the product in question, or from the substances which that product contains, into the environment are not hypothetical and are covered by the concept of 'emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006 (see, by analogy, judgment delivered today, *Bayer CropScience and Stichting De Bijenstichting*, C-442/14, paragraph 78 and 79).

76 Consequently, the Commission is wrong to maintain that, by considering that the document at issue included 'information ... [which] relates to emissions into the environment', the General Court erred in law, on the ground that that document did not contain any information on the nature and quantity of the emissions actually released into the environment when the product at issue is used.

– The criterion relating to a sufficiently direct link between the information and emissions into the environment

77 Last, it is necessary to establish whether the General Court was entitled, in paragraph 53 of the judgment under appeal, to conclude that it is sufficient that information relates 'in a sufficiently direct manner' to emissions into the environment in order for it to fall within the scope of the first sentence of Article 6(1) of Regulation No 1367/2006 or whether, as the Commission claims, such a criterion, relating to a sufficiently direct link between the information at issue and emissions, must be rejected as it has no basis in law.

78 In that regard, it follows from the wording of the first sentence of Article 6(1) of Regulation No 1367/2006 that that provision concerns information which 'relates to emissions into the environment', that is to say information which concerns or relates to such emissions and not information with a direct or indirect link to emissions into the environment. That interpretation is confirmed by point (d) of the first subparagraph of Article 4(4) of the Aarhus Convention, which refers to 'information on emissions'.

79 In the light of the objective set out in the first sentence of Article 6(1) of Regulation No 1367/2006 of ensuring a general principle of access to 'information ... [which] relates to emissions into the environment', that concept must be understood to include, inter alia, data that will allow the public to know what is actually released into the environment or what, it may be foreseen, will be released into the environment under normal or realistic conditions of use of the product or substance in question, namely those under which the authorisation to place that product or substance on the market was granted and which prevail in the area where that product or substance is intended to be used. Consequently, that concept must be interpreted as covering, inter alia, information concerning the nature, composition, quantity, date and place of the actual or foreseeable emissions, under such conditions, from that product or substance.

80 It is also necessary to include in the concept of 'information [which] relates to emissions into the environment' information enabling the public to check whether the assessment of actual or foreseeable emissions, on the basis of which the competent authority authorised the product or substance in question, is correct, and the data relating to the effects of those emissions on the environment. It is apparent, in essence, from recital 2 of Regulation No 1367/2006 that the purpose of access to environmental information provided by that regulation is, inter alia, to promote more effective public participation in the decision-making process, thereby increasing, on the part of the competent bodies, the accountability of decision-making and contributing to public awareness and support for the decisions taken. In order to be able to ensure that the decisions taken by the competent authorities in environmental matters are justified and to participate effectively in decision-making in environmental matters, the public must have access to information enabling it to ascertain whether the emissions were correctly assessed and must be given the opportunity reasonably to understand how the environment could be affected by those emissions.

81 On the other hand, while, as set out in paragraph 55 of the present judgment, it is not necessary to apply a restrictive interpretation of the concept of 'information [which] relates to emissions into the environment', that concept may not, in any event, include information containing any kind of link, even direct, to emissions into the environment. If that concept were interpreted as covering such information, it would to a large extent deprive the concept of 'environmental information' as defined in Article 2(1)(d) of Regulation No 1367/2006 of any meaning. Such an interpretation would deprive of

any practical effect the possibility, laid down in the first indent of Article 4(2) of Regulation No 1049/2001, for the institutions to refuse to disclose environmental information on the ground, inter alia, that such disclosure would have an adverse effect on the protection of the commercial interests of a particular natural or legal person and would jeopardise the balance which the EU legislature intended to maintain between the objective of transparency and the protection of those interests. It would also constitute a disproportionate interference with the protection of business secrecy ensured by Article 339 TFEU.

82 It follows from the above that, by holding, in paragraph 53 of the judgment under appeal, that it is sufficient that information relates, in a sufficiently direct manner, to emissions into the environment in order for that information to fall within the scope of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006, the judgment under appeal is vitiated by an error of law.

83 Consequently, since the first part of the single ground of appeal is well founded, it is appropriate, without it being necessary to examine the other parts of the single ground of appeal, to set aside the judgment under appeal.

Consequences of setting aside the judgment under appeal

84 In accordance with the first paragraph of Article 61 of the Statute of the Court of Justice of the European Union, the Court may, after quashing a decision of the General Court, refer the case back to the General Court for judgment or, where the state of the proceedings so permits, itself give final judgment in the matter.

85 In the present case, the resolution of the dispute entails a new assessment of the facts to be carried out by the General Court in the light of the considerations set out in paragraphs 78 to 80 of the present judgment, after giving the parties the opportunity to make submissions. If, following that assessment, the General Court considers that the information at issue does not fall within the scope of 'information [which] relates to emissions into the environment' within the meaning of the first sentence of Article 6(1) of Regulation No 1367/2006, it must rule on the first and third pleas in law relied on by Greenpeace Nederland and PAN Europe in their action for annulment.

86 Under those circumstances, the state of the proceedings does not permit the Court to give final judgment and it is therefore necessary to refer the case back to the General Court.

Costs

87 As the case is to be referred back to the General Court, the costs relating to the present appeal proceedings must be reserved.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Sets aside the judgment of the General Court of the European Union of 8 October 2013, *Stichting Greenpeace Nederland and PAN Europe* v *Commission* (T-545/11, EU:T:2013:523);**

2. **Refers Case T-545/11 back to the General Court of the European Union;**

3. **Reserves the costs.**

Da Cruz Vilaça Tizzano Berger

Levits Biltgen

Delivered in open court in Luxembourg on 23 November 2016.

A. Calot Escobar
Registrar

J.L. da Cruz Vilaça
President of the Fifth Chamber