OPINION OF ADVOCATE GENERAL KOKOTT

delivered on 10 March 2011 [1]

I — Introduction

1. The highest court in the United Kingdom, the Supreme Court, is submitting a question that would appear to be academic but whose effects are nevertheless not clearly foreseeable.

2. According to Directive 2003/4/EC on public access to environmental information [2] ('the Environmental Information Directive') individuals have a right of access to environmental information. This right can be restricted if disclosure would undermine particular interests deserving of protection. However, the exceptions do not apply if in a particular case the public interest served by disclosure outweighs the interest served by refusal.

3. The courts of the United Kingdom disagree as to how this balancing exercise is to be undertaken where several interests deserving of protection are simultaneously undermined. Is each exception to be addressed separately, by considering whether the interest served by it or the public interest served by disclosure prevails (the view taken by the courts at the first two instances and by a minority of the judges of the Supreme Court submitting the reference for a preliminary ruling)? Or can the interests served by different exceptions be combined and then together weighed against the public interest served by disclosure (view taken at third instance and by the majority of the Supreme Court)?

4. The issue therefore is whether, when deciding upon disclosure of environmental information, individual adversely affected interests which, when taken individually, would not be sufficient to outweigh the public interest served by disclosure can be cumulated and possibly together justify the confidential treatment of information.

5. These questions for the first time afford the European Court of Justice an opportunity to examine in greater detail the process of weighing such confidentiality interests against the public interest served by disclosure of information.

1 — Original language: German.

2 — Full title: 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).

II — Legal context

A — *International law*

6. The European Union has undertaken at international level to guarantee access to environmental information in the Convention on access to information, public participation in decision-making processes and access to justice regarding environmental matters [3] ('the Aarhus Convention'), which was signed by the Community in Aarhus (Denmark) on 25 June 1998. [4]

7. Possible restrictions on the right of access are derived, in particular, from Article 4(4) of the Convention:

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

…

(b) International relations, national defence or public security;

…

(e) Intellectual property rights;

…

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.'

B — *European Union law*

8. The Environmental Information Directive implements the Aarhus Convention on the part of the Union and for this purpose provides in Article 3(1) for a right of access to environmental information.

9. The exceptions are set out in particular in Article 4(2) of the Environmental Information Directive as follows:

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

…

3 — OJ 2005 L 124, p. 4.

4 — Adopted by Council Decision 2005/370/EC of 17 February 2005, OJ 2005 L 124, p. 1.

(b) international relations, public security or national defence;

…

(e) intellectual property rights;

...

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.'

10. Recital 16 in the preamble states:

'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.'

C — *National law*

11. Under national law the exceptions of relevance to this case are set out in more or less identical wording in the Environmental Information Regulations 2004. [5]

III — Facts and reference for a preliminary ruling

12. The information asked for relates to the precise location of mobile phone base stations in the United Kingdom.

13. It is possible to ascertain the approximate location of every base station in each map square from a website called Sitefinder, [6] which has been operated since the end of 2003

5 — S.I. 2004, No. 3391.
6 — Http://www.sitefinder.ofcom.org.uk/.

by the Office of Communications ('Ofcom'). The website is constructed from information voluntarily provided by mobile network operators from their databases. It enables individuals, by inputting a postcode, town or street name, to search a map square for information about the base stations within it. However, it does not show the precise location to within a metre or whether it has been mounted at street level or concealed within or on top of a structure or building.

14. An Information Manager for Health Protection Scotland (a branch of the National Health Service) requested from Ofcom precise grid references for each base station, it would appear for epidemiological purposes. Ofcom refused its request and also rejected its objection on review. The applicant then turned to the appellant, the Information Commissioner, who ordered disclosure. On an appeal by Ofcom the order for disclosure was upheld at first instance by the Information Tribunal.

15. The Information Tribunal found that disclosure of the information would adversely affect public safety and the protection of intellectual property rights. The information could make it easier to attack base stations. It was to be assumed that mobile network operators were proprietors of copyright and database rights in respect of the information. On the other hand, however, the public interest served by disclosure prevailed, in particular, because the information requested might be used for epidemiological investigations into the effects of mobile phones. In the balancing exercise the Information Tribunal examined the application of both exceptions separately and rejected the idea of weighing them together against the public interest served by disclosure.

16. Ofcom appealed to the Administrative Court, which took the same approach as the Information Tribunal on this last point. However, on a further appeal, the Court of Appeal reached the opposite conclusion.

17. The Information Commissioner's appeal before the Supreme Court concerns the single question of whether the adverse effects of both of the exceptions concerned are to be weighed together or separately against the public interest served by disclosure. The Supreme Court is at present inclined, by a majority of three to two, to favour the Court of Appeal's approach. It has therefore referred the following question to the Court of Justice:

'Under the Environmental Information Directive, where a public authority holds environmental information, disclosure of which

would have some adverse effects on the separate interests served by more than one exception (in casu, the interests of public security served by Article 4(2)(b) and those of intellectual property rights served by Article 4(2)(e)), but it would not do so, in the case of either exception viewed separately, to any extent sufficient to outweigh the public interest in disclosure, does the Directive require a further exercise involving the cumulation of the separate interests served by the two exceptions and their weighing together against the public interest in disclosure?'

18. The Information Commissioner, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland and the European Commission have submitted observations in writing and at the oral hearing on 27 January 2011.

IV — Appraisal

19. Article 3(1) of the Environmental Information Directive provides that public authorities are required to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.

20. This right was introduced in 1990 by the first Environmental Information Directive.[7] The Aarhus Convention developed it further and it has now been adopted by the Environmental Information Directive currently applicable.

21. Furthermore, the Treaty of Amsterdam has in the meantime given expression, in the second paragraph of Article 1 EU, to the intention to create an ever closer union among the peoples of Europe in which decisions are taken as openly as possible and as closely as possible to the citizen. For that purpose Article 15 TFEU (formerly Article 255 EC) requires the institutions to observe the principle of transparency and – together with Article 42 of the Charter of Fundamental Rights – provides for a right of access to their documents. This right is made a reality by Regulation (EC) No 1049/2001,[8] which by Article 3 et seq. of Regulation (EC) No 1367/2006[9] also governs the application

7 — 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).

8 — Regulation 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).

9 — Regulation 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).

of the law on environmental information to EU institutions and bodies.

22. Nevertheless, the right to environmental information is not an absolute right. Information may be refused under Article 4 of the Environmental Information Directive if disclosure of the information would adversely affect certain interests expressly stated therein. However, the interest served by the refusal must be weighed against the public interest served by disclosure.

23. This reference for a preliminary ruling concerns that weighing of interests. The Supreme Court wishes to establish whether this balancing exercise has to be carried out in two stages, that is to say by

— *initially* examining in relation to each individual exception whether there is a public interest in disclosure that outweighs the negative effects of disclosure of the information, and

— *then cumulatively* weighing the separate adversely affected interests together against the public interest served by disclosure.

24. At first sight the mode of procedure suggested in the request for a preliminary ruling would appear surprising as it is tantamount to a double balancing exercise. However, the second and third sentences of Article 4(2) of the Environmental Information Directive point in this direction as these two sentences *twice* refer to the public interest served by the disclosure of information.

25. According to the *second sentence* the grounds for refusal mentioned in paragraphs 1 and 2 of Article 4 are to be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. According to the *third sentence,* in every particular case, the public interest served by disclosure is to be weighed against the interest served by the refusal. The answer to the question referred for a preliminary ruling therefore depends upon the interpretation of these two sentences.

A — *Second sentence of Article 4(2) of the Environmental Information Directive*

26. Consideration of the public interest under the second sentence of Article 4(2) of the Environmental Information Directive does indeed require an *initial balancing exercise*. According to the second sentence of recital 16 in the preamble, when construing the grounds for refusal of disclosure the public interest served by disclosure should be weighed against the interest served by the refusal.

27. This initial balancing exercise relates exclusively to each exception concerned, for it is to be carried out in the course of interpreting the reasons permitting a refusal.

28. The balancing exercise concerns, first, the question of what is to be regarded as the negative effect on the interest served, since the issue of whether certain effects of disclosure of information are regarded as negative has to be decided in the light of the public interest served by disclosure. [10]

29. However, consideration of whether, in an exceptional case, the public interest served by the disclosure of information outweighs the negative effects on the interest specifically served can also form part of this initial balancing exercise.

30. Hence, the only balancing exercise which the Information Commissioner, Sweden, the Information Tribunal, the Administrative Court and a minority of the Supreme Court would allow already follows from the second sentence of Article 4(2) of the Environmental Information Directive.

10 — According to my Opinion delivered on 3 March 2011 in Case C-506/08 P *Sweden* v *Commission* [2011], pending before the Court, (particularly point 47 et seq.), therefore, the scrutiny of decision-making processes by the public cannot be considered to adversely affect those processes.

B — *Third sentence of Article 4(2) of the Environmental Information Directive*

31. When interpreting Article 4(2) of the Environmental Information Directive it is therefore necessary to consider the function to be attributed to the third sentence.

1. The third sentence of Article 4(2) of the Environmental Information Directive as clarification of the second sentence?

32. The third sentence of Article 4(2) of the Environmental Information Directive might, first, be considered a clarification of the second sentence. In the same way as in the second sentence of recital 16, it is stated that consideration of the issue should take the form of a balancing exercise. It is also again said that the balancing exercise has to be conducted in every particular case, so that the Member States cannot forestall it when transposing the legislation. [11]

11 — See meanwhile Case C-266/09 *Stichting Natuur en Milieu* [2010] ECR I-13119, paragraph 56.

33. The origin of the third sentence of Article 4(2) of the Environmental Information Directive supports the clarification theory. This provision was not introduced until shortly before the directive was accepted by the Conciliation Committee. The precise reasons are not documented. On this point the Council had admittedly already rejected the idea of a weighing obligation, as the Aarhus Convention speaks only of the taking into account of the public interest served by disclosure. [12] On the other hand, the Commission and Parliament had suggested various wording to make it clear that access has to be granted where the public interest served by disclosure prevails. The third sentence could therefore be an attempt to accommodate that approach.

34. However, such clarification would be partly superfluous and furthermore unsuccessful.

35. The second sentence of Article 4(2) of the Environmental Information Directive already refers to the particular case, so that there was no need for it to be repeated in the third sentence.

36. It would also have been clearer to replace the second sentence of Article 4(2) of the Environmental Information Directive by wording such as that contained in the second sentence of recital 16 [13] or the version of the second sentence of Article 4(2) proposed by the Commission [14] and approved by Parliament at its first reading, [15] [16] so as to define the proposed consideration process as a balancing exercise.

37. An interpretation of the third sentence of Article 4(2) of the Environmental Information Directive as a purely clarifying provision is therefore not convincing.

12 — See the last indents in Section VI(5) and (6) of Common Position (EC) No 24/2002 adopted by the Council on 28 January 2002 with a view to adopting Directive 2002/.../EC of the European Parliament and of the Council on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2002 C 113 E, p. 1 to p. 12).

13 — '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.'

14 — Proposal for a Directive of the European Parliament and of the Council on public access to environmental information, COM(2000) 402 final.

15 — Parliament document A5-0074/2001 (OJ 2001 C 343, p. 165).

16 — 'In each case, the public interest served by the disclosure shall be weighed against the interest served by the refusal.' This became the third sentence of Article 4(2) of the Proposal amended by Parliament by the addition of one sentence at the first reading.
See too the Amended Proposal for a Directive of the European Parliament and of the Council on public access to environmental information presented by the Commission following the first reading (OJ 2001 C 240 E, p. 289 to p. 292): 'The above-mentioned grounds for refusal to disclose information shall be interpreted in a restrictive manner.... In each case mentioned under Article 4(1)(c) and (2)(a) to (g), the public interest served by the disclosure shall be weighed against the interest served by the refusal. Access to the requested information shall be granted if the public interest outweighs the latter interest.'

2. The third sentence of Article 4(2) of the Environmental Information Directive as a balancing of cumulative interests?

38. It is therefore necessary to examine whether the third sentence of Article 4(2) of the Environmental Information Directive has an independent function that is separate from the second sentence and the balancing exercise provided for therein. That function could consist of a balancing exercise in respect of the cumulative interests which militate against disclosure to which the request for a preliminary ruling refers.

The wording of the third sentence of Article 4(2) of the Environmental Information Directive

39. Contrary to the view expressed by Sweden and the Information Commissioner, the use of the term 'interest' in the singular does not preclude a cumulation of several interests. Admittedly, most of the language versions [17] in each case compare only the public interest served by disclosure with the interest served by the refusal, i.e. the term 'the interest' is used in the singular. However, 'the interest' served by one thing or another can, by its natural literal meaning, encompass various (different) interests which are indicative of one or other outcome.

40. Nor does emphasis on the particular case in which the balancing exercise is to be carried out proscribe cumulation. As argued by the United Kingdom, the more obvious interpretation is that the term 'in the particular case' means that it relates to the specific decision that is pending on the disclosure of information. [18]

41. Furthermore, the breakdown of interests meriting protection into different exceptions does not preclude their cumulation. As convincingly argued by the United Kingdom, these exceptions are not always clearly distinguishable from each other. Indeed, the interests meriting protection sometimes clearly overlap. This is immediately apparent in the case of the interests meriting protection under subparagraphs (d) to (g) of Article 4(2) of the Environmental Information Directive: the confidentiality of commercial or industrial information, intellectual property rights, personal data and the interests or protection of any person who supplied information on a voluntary basis.

17 — In Danish ('interesser') and Estonian ('huvidega') the phrase 'interests' seems to have been used in the plural; the Latvian version refers to advantages: 'ieguvumu' and 'ieguvumam'.

18 — The judgment in *Stichting Natuur en Milieu* (cited in footnote 11, paragraph 55 et seq.) is also based on that understanding.

42. Nor can Sweden ultimately succeed in its argument that the balancing exercise under the Environmental Information Directive should be conducted in exactly the same way as under Regulation No 1049/2001.

43. First, the manner in which the present question would be answered under Regulation No 1049/2001 has not yet been established at all. The Court of Justice has not yet examined whether a cumulation of interests is possible or even imperative in a balancing exercise under the regulation. [19]

44. Second, the text of the regulation with regard to the balancing exercise clearly differs from that of the Environmental Information Directive. Under Article 4(2) and (3) of the regulation [20] access to documents may be refused where certain protected interests are undermined 'unless there is an overriding public interest in disclosure'. This balancing requirement is more restrictively worded than the third sentence of Article 4(2) of the Environmental Information Directive.

Restriction of possible exceptions

45. However, Sweden rightly argues that a cumulation of interests cannot create *additional exceptions* to the right to information.

46. Under the first sentence of recital 16 of the Environmental Information Directive the disclosure of environmental information may be refused only *in specific and clearly defined cases*. These cases are expressly set out in Article 4(1) and the first sentence of Article 4(2). These exceptions, by their very wording, are not illustrative but exhaustive. [21] This is confirmed by the restrictive interpretation required under the second sentence of Article 4(2).

47. Additional exceptions would also conflict with the Aarhus Convention, which in Article 4(3) and(4) similarly makes provision for

19 — In Joined Cases C-514/07 P, C-528/07 P and C-532/07 P *Sweden* v *API and Commission* [2010] ECR I-8533, paragraph 158, it admittedly said that certain vague considerations cannot provide an appropriate basis for establishing that the principle of transparency is in some sense especially pressing and capable, therefore, of prevailing over *the reasons* (in the plural!) justifying the refusal to disclose the documents in question. However, it is not clear whether those reasons should be considered individually or cumulatively.

20 — No provision is made for a balancing exercise in the case of exceptions under Article 4(1) of Regulation No 1049/2001.

21 — See, in the context of Regulation No 1049/2001, Case C-64/05 P *Sweden* v *Commission (IFAW)* [2007] ECR I-11389, paragraph 66 et seq., particularly paragraph 76.

certain expressly stated exceptions only. [22] That Convention, like all other international conventions concluded by the European Union, prevails over provisions of secondary Union legislation. [23] Because of that primacy, secondary Community legislation is to be interpreted as far as possible consistently with the Union's obligations under international law, [24] which must also apply in the context of environmental information. [25]

48. The third sentence of Article 4(2) of the Environmental Information Directive must not therefore lead to additional exceptions that are not expressly listed in Article 4(1) and the first sentence of Article 4(2).

49. It would therefore be manifestly impossible to permit interests to be included in a balancing exercise under the third sentence of Article 4(2) of the Environmental Information Directive which, although they might militate against disclosure, are not recognised in Article 4 as a basis for exceptions to the right of access to environmental information, e.g. the cost of handling enquiries.

50. The Commission also correctly points out that the category of interests meriting protection is further restricted in the case of decisions on disclosure of *information on emissions*. Under the fourth sentence of Article 4(2) of the Environmental Information Directive – the so-called 'emissions clause' – most of the interests stated in Article 4(2) cannot justify refusal. Protection of the confidentiality of proceedings of public authorities (Article 4(2)(a)) or of commercial or industrial information (Article 4(2)(d)) is therefore precluded, for instance. Nor, therefore, can those interests be included in a balancing exercise on the disclosure of information on emissions.

51. Nor would it be possible to take into account recognised interests that are indeed affected but where it is impossible to establish in the context of an initial balancing exercise under the second sentence of Article 4(2) of the Environmental Information Directive that a disclosure of information would have adverse effects. Interests that are not undermined cannot have any weight in a balancing

22 — For those reasons when the Environmental Information Directive was adopted the Finnish Government declared its non-acceptance of the third sentence of Article 4(2); see Council document 14917/02 ADD 1 REV 1, 13 December 2002, p. 1.

23 — Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 52; Case C-286/02 *Bellio F.lli* [2004] ECR I-3465, paragraph 33; and Case C-344/04 *IATA and ELFAA* [2006] ECR I-403, paragraph 35.

24 — *Commission* v *Germany* (cited in footnote 23, paragraph 52); Case C-341/95 *Bettati* [1998] ECR I-4355, paragraph 20; *Bellio F.lli* (cited in footnote 23, paragraph 33); Case C-306/05 *SGAE* [2006] ECR I-11519, paragraph 35; and Case C-161/08 *Internationaal Verhuis-en Transportbedrijf Jan de Lely* [2009] ECR I-4075, paragraph 38.

25 — See my Opinions in Case C-266/09 *Stichting Natuur en Milieu* [2010] ECR I-13119, point 41, and in Case C-524/09 *Ville de Lyon* [2010] ECR I-14115, point 64 et seq. The judgment in *Ville de Lyon*, paragraph 35 et seq., can hardly be construed as a departure from that established case-law.

exercise. If therefore effects on those interests are established they must be of a negative kind if they are to be included in the balancing exercise.

52. The main issue, however, is whether additional exceptions are created by a cumulation of recognised adversely affected confidentiality interests during the balancing exercise.

53. Cumulation can unquestionably bring about an *additional restriction* of access to environmental information if several interests together justify a refusal of disclosure even though, when taken in isolation, they would be outweighed by the public interest served by disclosure. It would nevertheless still always be a question of restriction of access based on recognised interests.

54. I agree with the United Kingdom in considering that this additional restriction correctly applies the principle of proportionality.

55. The principle of proportionality is one of the general principles of EU law which the legislature must observe. [26] The acts of the bodies of the European Union must, therefore, not exceed the bounds of what is appropriate and necessary in order to achieve the objectives legitimately pursued by the legislation in question. When there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued. [27]

56. However, if the recognised interests militating against disclosure were together to clearly outweigh the public interest served by disclosure, the disadvantages caused by the disclosure of environmental information would no longer be proportionate to the aims pursued.

57. Whilst Sweden and the Information Commissioner are relying on the requirement that exceptions be afforded a restrictive interpretation, not even that principle demands the disclosure of environmental information which leads to disproportionate disadvantages. It should instead be observed when interpreting the exceptions, weighing up the interests and in the course of the balancing exercise itself. One cannot, in particular, blindly set two disadvantages against

26 — Case 25/70 *Köster, Berodt & Co.* [1970] ECR 1161, paragraph 21 et seq.; Case 137/85 *Maizena and Others* [1987] ECR 4587, paragraph 15; and Joined Cases C-37/06 and C-58/06 *Viamex Agrar Handel* [2008] ECR I-69, paragraph 33.

27 — See, to that effect, *Köster, Berodt & Co.* (cited in footnote 26, paragraphs 28 and 32); Case 265/87 *Schräder HS Kraftfutter* [1989] ECR 2237, paragraph 21; Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81; *Viamex Agrar Handel* (cited in footnote 26, paragraph 35); and Joined Cases C-379/08 and C-380/08 *ERG and Others* [2010] ECR I-2007, paragraph 86.

one advantage; the interests concerned must be assigned a weight that reflects their significance before the balancing exercise begins.

58. The Information Commissioner does indeed fear that the balancing of cumulative interests would be difficult to achieve in practice; however, these difficulties lie less in cumulation itself than in the nature of the balancing exercise between the interests served by disclosure and the interests served by the withholding of information. These interests are generally only comparable with difficulty, so that it is also difficult to weigh them against each other. This balancing exercise is made easier, however, if one applies the requirement of a restrictive interpretation of exceptions during the balancing exercise such that, in the event of doubt, the issue is decided in favour of transparency.

59. Furthermore, the balancing exercise itself can require cumulation in the context of individual exceptions, that is to say – as correctly argued by the United Kingdom – on the side of the public interest served by disclosure. [28] Recital 1 in the preamble to the Environmental Information Directive refers to three different interests: first, a greater awareness of environmental matters; second, a free exchange of views and more effective participation by the public in environmental decision-making; and third, a better environment.

60. Consequently, the answer to the reference for a preliminary ruling should be that where a public authority holds environmental information, disclosure of which would have some adverse effects on the separate interests served by more than one exception under Article 4(2) of the Environmental Information Directive, but it would not do so, in the case of either exception viewed separately, to any extent sufficient to outweigh the public interest in disclosure, the directive requires a further exercise involving the cumulation of the separate interests served by the two exceptions and their weighing together against the public interest in disclosure.

C — *The exceptions under Article 4(1) of the Environmental Information Directive*

61. I should finally like to briefly go into one matter on which the Commission and the United Kingdom were in disagreement – that is to say, whether a balancing exercise can also extend to the exceptions stated in Article 4(1) of the Environmental Information Directive. This question is not the subject of the reference for a preliminary ruling as that

28 — See, by way of illustration regarding Regulation No 1049/2001, Joined Cases C-39/05 P and C-52/05 P *Sweden and Turco* v *Council* [2008] ECR I-4723, paragraphs 45 to 47 and 67.

only refers to two of the exceptions under Article 4(2).

62. If the Court of Justice should nevertheless wish to express a view on the inclusion of Article 4(1) of the Environmental Information Directive, it is clear that subparagraph (a) is not amenable to a balancing exercise: if the information requested is not held by a public authority it cannot disclose it. Whether or not this also applies to requests formulated in too general a manner as per subparagraph (c) depends upon the interpretation of that exception. If it extends only to requests whose subject matter cannot be identified, no balancing exercise would be possible here either.

63. On the other hand, the case of requests that are manifestly unreasonable (Article 4(1)(b) of the Environmental Information Directive) and requests concerning unfinished material (4(1)(d)) and internal communications (4(1)(e)), protection is being afforded to interests which are amenable to a balancing exercise and which therefore also have to be taken into account if there is an adverse effect. The same would apply to requests formulated in too general a manner (4(1)(c)) if that term could also cover requests that it would be particularly costly to handle because of their generality.

V — Conclusion

64. I therefore propose that the Court answer the question referred for preliminary ruling as follows:

Under Council Directive 2003/4/EC on public access to environmental information, where a public authority holds environmental information, disclosure of which would have some adverse effects on the separate interests served by more than one exception under Article 4(2), but it would not do so, in the case of either exception viewed separately, to any extent sufficient to outweigh the public interest in disclosure, the directive requires a further exercise involving the cumulation of the separate interests served by the two exceptions and their weighing together against the public interest in disclosure.