JUDGMENT OF THE COURT (Fourth Chamber)

17 February 2009 *

In Case C-552/07,

REFERENCE for a preliminary ruling under Article 234 EC from the Conseil d'État (France), made by decision of 21 November 2007, received at the Court on 11 December 2007, in the proceedings

Commune de Sausheim

v

Pierre Azelvandre,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, T. von Danwitz, R. Silva de Lapuerta (Rapporteur), E. Juhász and J. Malenovský, Judges,

* Language of the case: French.

Advocate General: E. Sharpston,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 14 October 2008,

after considering the observations submitted on behalf of:

— the Commune de Sausheim, by D. Le Prado, avocat,

— the French Government, by G. de Bergues and A.-L. During, acting as Agents,

— the Greek Government, by S. Papaioannou and V. Karra and by I. Chalkias, acting as Agents,

— the Netherlands Government, by C. Wissels and M. de Mol and by M. de Grave, acting as Agents,

— the Polish Government, by M. Dowgielewicz and B. Majczyna, acting as Agents,

— the Commission of the European Communities, by C. Zadra and J.-B. Laignelot, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 December 2008,

gives the following

Judgment

1 This reference for a preliminary ruling, in the terms set out by the referring court, concerns the interpretation of Article 19 of Council Directive 90/220/EEC of 23 April 1990 on the deliberate release into the environment of genetically modified organisms (OJ 1990 L 117, p. 15).

2 The main proceedings concern the challenge to an administrative decision which took effect in 2004. Under the first subparagraph of Article 34(1) of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220 (OJ 2001 L 106, p. 1), Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 17 October 2002. Under Article 36(1) of Directive 2001/18, Directive 90/220 was

repealed on the same date. In those circumstances, the reference for a preliminary ruling must be examined in the light of Directive 2001/18.

3 That reference was made in the context of a dispute between the Commune de Sausheim (Commune of Sausheim) and Mr Azelvandre concerning the refusal to disclose to Mr Azelvandre prefectoral correspondence and planting records relating to deliberate test releases of genetically modified organisms ('GMOs').

Legal context

4 Article 1 of Directive 2001/18 provides:

'In accordance with the precautionary principle, the objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States and to protect human health and the environment when:

— carrying out the deliberate release into the environment of genetically modified organisms for any other purposes than placing on the market within the Community,

— placing on the market genetically modified organisms as or in products within the Community.'

5 In accordance with Article 2(3) of that directive, 'deliberate release' means any intentional introduction into the environment of a GMO or a combination of GMOs for which no specific containment measures are used to limit their contact with and to provide a high level of safety for the general population and the environment.

6 Article 4(1) and (2) of that directive defines the relevant general obligations of the Member States as follows:

'1. Member States shall, in accordance with the precautionary principle, ensure that all appropriate measures are taken to avoid adverse effects on human health and the environment which might arise from the deliberate release or the placing on the market of GMOs. GMOs may only be deliberately released or placed on the market in conformity with part B or part C respectively.

2. Any person shall, before submitting a notification under part B or part C, carry out an environmental risk assessment. The information which may be necessary to carry out the environmental risk assessment is laid down in Annex III. …'

7 With regard to the 'standard authorisation procedure', Article 6(1) and (2)(a) of Directive 2001/18 provides:

'1. Without prejudice to Article 5, any person must, before undertaking a deliberate release of a GMO or of a combination of GMOs, submit a notification to the competent authority of the Member State within whose territory the release is to take place.

2. The notification referred to in paragraph 1 shall include:

(a) a technical dossier supplying the information specified in Annex III necessary for carrying out the environmental risk assessment of the deliberate release of a GMO or combination of GMOs …'

8 Article 9 of that directive states:

'1. Member States shall, without prejudice to the provisions of Articles 7 and 25, consult the public and, where appropriate, groups on the proposed deliberate release. In

doing so, Member States shall lay down arrangements for this consultation, including a reasonable time-period, in order to give the public or groups the opportunity to express an opinion.

2. Without prejudice to the provisions of Article 25:

— Member States shall make available to the public information on all part B releases of GMOs in their territory;

…'

9 With regard to the 'notification procedure', Article 13(2)(a) of that directive states:

'The notification shall contain:

(a) the information required in Annexes II and IV. This information shall take into account the diversity of sites of use of the GMO as or in a product and shall include information on data and results obtained from research and developmental releases concerning the impact of the release on human health and the environment.'

10 Article 25 of that directive provides:

‘1. The Commission and the competent authorities shall not divulge to third parties any confidential information notified or exchanged under this directive and shall protect intellectual property rights relating to the data received.

2. The notifier may indicate the information in the notification submitted under this directive, the disclosure of which might harm his competitive position and which should therefore be treated as confidential. Verifiable justification must be given in such cases.

3. The competent authority shall, after consultation with the notifier, decide which information will be kept confidential and shall inform the notifier of its decisions.

4. In no case may the following information when submitted according to Articles 6, 7, 8, 13, 17, 20 or 23 be kept confidential:

— general description of the GMO or GMOs, name and address of the notifier, purpose of the release, location of release and intended uses;

— …

— environmental risk assessment.'

11 Article 31(3) of that directive, concerning the exchange of information and reporting, provides:

'Without prejudice to paragraph 2 and point A No 7 of Annex IV,

(a) Member States shall establish public registers in which the location of the release of the GMOs under part B is recorded.

(b) Member States shall also establish registers for recording the location of GMOs grown under part C, inter alia so that the possible effects of such GMOs on the environment may be monitored … Without prejudice [to the provisions of Articles 19(3)(f) and 20(1)], the said locations shall:

— be notified to the competent authorities, and

— be made known to the public

in the manner deemed appropriate by the competent authorities and in accordance with national provisions.'

12 Annex III to Directive 2001/18 specifies the information which is required in the notifications referred to in parts B and C of that directive, that is to say, Articles 5 to 24 thereof.

13 Article 3(2) 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) provides:

'Member States may provide for a request for such information to be refused where it affects:

— the confidentiality of the proceedings of public authorities, international relations and national defence,

— public security,

…

— commercial and industrial confidentiality, including intellectual property,

…

— material, the disclosure of which would make it more likely that the environment to which such material related would be damaged.

…'

14 Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Directive 90/313 (OJ 2003 L 41, p. 26), which, under the first paragraph of Article 10 thereof, was to be brought into force by 14 February 2005, provides in the first subparagraph, under (b), (e) and (h), of Article 4(2) that Member States may provide for a request for environmental information to be refused if disclosure of that information would adversely affect, for example, public security or national defence, intellectual property rights and the protection of the environment to which such information relates.

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

15 By letter of 21 April 2004, Mr Azelvandre requested the Mayor of the Commune de Sausheim to disclose to him, concerning each release of GMOs taking place within that commune, the public notice, the planting record allowing the parcel of land that has been planted to be located, and the prefectoral covering letter relating to those documents. He also requested the information file on each new release which would take place in 2004.

16 In the absence of an answer to his request, Mr Azelvandre, by letter of 1 June 2004, applied to the Committee on Access to Administrative Documents (CAAD) for disclosure of the documents referred to in the letter of 21 April 2004. On 24 June 2004, that committee issued a favourable opinion on the disclosure of the public notice and the first page of the prefectoral covering letter. By contrast, it decided against the disclosure of the planting record for the parcels of land and of the map showing where the releases had occurred, on the ground that that disclosure would prejudice the privacy and safety of the farmers concerned. The committee also declared inadmissible the application for disclosure of the information files relating to any new release.

17 Following that opinion, on 24 May and 4 August 2004, the Mayor of Sausheim disclosed to Mr Azelvandre the public notices relating to the five releases of GMOs carried out within the commune and the prefectoral covering letters relating to two of those notices.

18 On 16 September 2004, Mr Azelvandre brought an application before the Tribunal administratif de Strasbourg (Strasbourg Administrative Court) seeking, first, the annulment of the implicit decision by which the Mayor of Sausheim had rejected his request for disclosure of the prefectoral letters and the planting records for each release

of GMOs that had taken place within that commune and, second, an order that the Mayor disclose those documents to him.

19 By decision of 10 March 2005, the Tribunal administrative de Strasbourg, first, annulled the implicit decision by which the Mayor of Sausheim had refused to disclose to Mr Azelvandre the prefectoral letters relating to the other release trials of GMOs and the planting records relating to five field trials, save for information as to names, and, second, ordered the Mayor of that commune to disclose the abovementioned documents to Mr Azelvandre.

20 On 30 May 2005, the Commune de Sausheim brought an appeal before the Conseil d'État against that decision, seeking the annulment thereof.

21 The Conseil d'État has doubts with regard to the interpretation of the public information obligations relating to the deliberate release of GMOs, arising in particular under Article 19 of Directive 90/220.

22 In those circumstances, the Conseil d'État decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

'1. Must "the location where the release" of genetically modified organisms "will be carried out" which, under Article 19 of … Directive 90/220 …, may not be kept

confidential, mean the registered parcel of land or a larger geographical area corresponding either to the commune in which the release occurs or to an even greater area such as a canton or department?

2. If the location is to be understood as requiring designation of the registered parcel of land, can an exception relating to the protection of public order or other confidential matters protected by law preclude, on the basis of Article 95 [EC] …, or of Directive 2003/4 … or of a general principle of Community law, the disclosure of the registered reference number or numbers of the location of the release?'

The questions referred

Question 1

Observations submitted before the Court

23 The Commune de Sausheim considers that the 'location of release' within the meaning of the first indent of Article 25(4) of Directive 2001/18 must mean the commune within which the trials are carried out.

24 The French Government takes the view that the location of release can cover a geographical area larger than the registered parcel of land, such an area possibly being the commune or the canton.

25 According to the Greek Government, the location of release should be defined as a parcel of land registered at the land registry and shown as such or, in the absence of a registry, a specific parcel of land precisely located in the national system for the identification of parcels of land under the system of geographical information.

26 The Netherlands Government submits that the concept of location of release should mean the registered parcel of land only in certain cases. In determining that concept, the administrative and judicial authorities of the Member States should benefit from a certain discretion.

27 The Polish Government asserts that the location of release means not the registered parcel of land, but a larger geographical area, defined in such a way that it guarantees suitable public access to the information about the release of GMOs into the environment, whilst protecting the economic interests of the operators performing those operations.

28 The Commission of the European Communities states that the location of release must be determined according to the information which is provided to the national authorities by the person who submits the notification to those authorities, on a case-by-case basis, in accordance with the procedures laid down in parts B and C of Directive 2001/18.

The answer of the Court

29 In order to answer that question, it should be noted as a preliminary point that Article 25(4) of Directive 2001/18, which provides that a certain amount of information concerning deliberate releases of GMOs into the environment cannot be kept confidential, is part of a body of rules relating to the different procedures applicable to such releases. Those rules are informed by the objectives pursued by that directive, as they are made explicit in recitals 5, 6, 8 and 10 of that directive, namely the protection of human health, the principles that preventive action should be taken, the precautionary principle and the transparency of measures relating to the preparation and implementation of those releases.

30 Concerning the last of the above objectives, it should be stated that the system of transparency established by that directive is reflected in particular in Articles 9, 25(4) and 31(3) thereof. By those provisions, the Community legislature has sought to establish not only procedures for consultation of the general public and, if appropriate, of certain groups on a proposed deliberate release of GMOs, but also a right of public access to information relating to that operation and the establishment of public registers which must include information on the location of every release of GMOs.

31 As was observed by the Advocate General in points 45 and 48 of her Opinion, it follows also from those provisions that the rights set out in them are closely related to the information which must be provided in the context of the notification procedure required to be followed for every deliberate release of GMOs for any purpose other than that of being placed on the market, in accordance with Articles 5 to 8 of Directive 2001/18.

32 It follows from the connection thereby established between the notification procedure and the access to information relating to the proposed deliberate release of GMOs that, save in the case of exemptions under that directive, the relevant public may request the disclosure of all information submitted by the notifier in the context of the authorisation procedure relating to that release.

33 Concerning the nature of that information, Article 6(1) and (2) of Directive 2001/18 provides that any person wishing to undertake a deliberate release of GMOs is to submit a notification to the competent authority of the Member State within whose territory the release is to take place, which is to include a technical dossier supplying the information required by Annex III to that directive. Furthermore, under Article 13(2)(a) of that directive, that information is to take into account the diversity of sites of use of the GMOs.

34 The Member States must take account of all of those factors in their obligations under Article 4(1) and (2) of Directive 2001/18 to ensure that all appropriate measures are taken to avoid adverse effects on human health and the environment which might arise from the deliberate release of GMOs and to carry out an appropriate assessment of possible risks for the environment deriving from such an operation.

35 As regards the level of detail of information to provide, the Court notes that, as indicated in Annex III to Directive 2001/18, it varies according to the nature of the proposed deliberate release of GMOs. In that regard, Annex IIIB to that directive, concerning proposed releases of genetically modified higher plants, includes detailed provisions relating to the information which must be provided by the notifier.

36 Included in particular amongst the information which must be mentioned in the technical dossiers accompanying the notifications, under the provisions of Annex IIIB(E) to that directive, are the location and size of the release sites, the description of the release site ecosystem, including climate, flora and fauna and the proximity to officially recognised biotopes or protected areas which may be affected.

37 Concerning releases of genetically modified organisms other than higher plants, Annex IIIA, part III(B), specifies, amongst the information which must be mentioned in the technical dossiers accompanying the notifications, the geographical location and grid reference of the release site(s) and the description of target and non-target ecosystems likely to be affected.

38 Therefore, the factors relating to the geographical location of a deliberate release of GMOs which must be included in the notification thereof fulfil requirements intended to determine the concrete effects of such an operation on the environment. The information concerning the site of such a release must therefore be defined according to the nature of each operation and of its possible impact on the environment, as is apparent from the two preceding paragraphs.

39 Consequently, the answer to the first question is that the 'location of release' within the meaning of the first indent of Article 25(4) of Directive 2001/18 is determined by all the information relating to the location of the release submitted by the notifier to the competent authorities of the Member State on whose territory that release is to take place in the context of the procedures referred to in Articles 6, 7, 8, 13, 17, 20 or 23 of that directive.

Question 2

Observations submitted before the Court

40 The Commune de Sausheim considers that Article 95 EC and Directive 2003/4 allow the national authorities to decide that the information relating to the location of tests of a deliberate release of GMOs may be kept confidential for reasons relating to the protection of public order and security.

41 The French Government claims that, if the Court were to consider the location of release to be the registered parcel of land, Article 4(2) of Directive 2003/4 should be interpreted to mean that it allows the competent authorities to examine on a case-by-case basis whether, independently of the interests of the notifier, interests relating in particular to the protection of public security preclude the disclosure of information relating to that location.

42 According to the Greek Government, if the 'location of release' corresponds to a registered parcel of land, an exception relating to the protection of public order or other secrets protected by law could be put forward only in exceptional cases against the disclosure of land registry references of the location of release, and on condition that it is not expressed in general terms, but based on a sufficient statement of reasons.

43 The Polish Government submits, if the concept of location of release relates to the registered parcel of land, that the exception relating to the protection of public order

could, in principle, be put forward against the disclosure of land registry references on the basis of Directive 2003/4 and Article 95 EC.

44 The Commission maintains that Community law does not provide for any public order or other exceptions which could be put forward against the rule set out in the first indent of Article 25(4) of Directive 2001/18.

The answer of the Court

45 In order to answer the second question asked by the referring court, the Court notes that Article 25(1) to (3) of Directive 2001/18 creates a system which precisely defines the confidentiality which can apply to the various information that is disclosed in the context of notification procedures and exchange of information provided for by that directive.

46 It follows from those provisions that confidential information notified to the Commission and to the competent authority or exchanged in accordance with that directive and also information liable to harm a competitive position cannot be disclosed and that intellectual property rights relating to that information must be protected. Furthermore, under Article 25(2) and (3), the competent authority decides, after consulting the notifier, what information must be kept confidential in the light of the 'verifiable justification' given by the notifier, who is informed of the decision taken in that respect by the authority.

47 By that body of provisions, Directive 2001/18 therefore established exhaustive rules relating to the right of public access in the area considered and the existence of any exceptions to that right.

48 As regards the information relating to the location of release, it should be emphasised that, under the first indent of Article 25(4) of that directive, it can in no case be kept confidential.

49 In those circumstances, considerations relating to the protection of public order and other secrets protected by law, such as specified by the referring court in its second question, cannot constitute reasons capable of restricting access to the information listed in Article 25(4) of Directive 2001/18, including in particular those relating to the location of release.

50 The Court has already held that apprehension of internal difficulties cannot justify a failure by a Member State to apply Community law effectively (see inter alia Case C-265/95 *Commission* v *France* [1997] ECR I-6959, paragraph 55). In particular, concerning the deliberate release of GMOs into the environment, the Court held in Case C-121/07 *Commission* v *France* [2008] ECR I-9159, paragraph 72, that, even on the assumption that the social unrest referred to by the French Republic is in fact attributable in part to the implementation of Community rules, a Member State may not plead difficulties of implementation which emerge at the stage when a Community measure is put into effect, including difficulties relating to opposition on the part of certain individuals, to justify a failure to comply with obligations and time-limits laid down by Community law.

51 That interpretation of Directive 2001/18 is substantiated by the requirement, referred to in the third indent of Article 25(4) thereof, that information concerning the environmental risk assessment may not be kept confidential. Indeed, such an assessment is possible only with full knowledge of the proposed release, because, without such information, it would not be possible validly to assess the potential effects of a deliberate release of GMOs on human health and the environment (see, to that effect, Case C-121/07 *Commission* v *France*, paragraphs 75 and 77).

52 Concerning Directives 90/313 and 2003/4, it should be added that, as the Advocate General pointed out in point 56 of her Opinion, a Member State cannot invoke an exemption provision included in those directives in order to refuse access to information which should be in the public domain under the provisions of Directives 90/220 and 2001/18.

53 Finally, as the referring court has referred to Article 95 EC, it suffices to observe that the Member State concerned has not made use of the power provided by that article.

54 It follows from the above considerations that the provisions of Article 3(2) of Directive 90/313 and of Article 4(2) of Directive 2003/4, according to which a request for environmental information may be refused if disclosure of the information requested would be liable to adversely affect certain interests, including public security, may not be validly relied upon to oppose the requirements of transparency arising from Article 25(4) of Directive 2001/18.

55 In consequence, the answer to the second question is that an exception relating to the protection of public order or other interests protected by law cannot be relied on to oppose the disclosure of the information set out in Article 25(4) of Directive 2001/18.

Costs

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

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

1. **The 'location of release', within the meaning of the first indent of Article 25(4) of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC, is determined by all the information relating to the location of the release submitted by the notifier to the competent authorities of the Member State on whose**

territory that release is to take place in the context of the procedures referred to in Articles 6, 7, 8, 13, 17, 20 or 23 of that directive.

2. An exception relating to the protection of public order or other interests protected by law cannot be relied on against the disclosure of the information set out in Article 25(4) of Directive 2001/18.

[Signatures]