Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

20 January 2021 *

(Reference for a preliminary ruling – Environment – Aarhus Convention – Directive 2003/4/EC – Public access to environmental information – 'Stuttgart 21' infrastructure project – Refusal of a request for environmental information – Article 4(1) – Grounds for refusal – Term 'internal communications' – Scope – Limitation in time of the protection of such communications)

In Case C-619/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 8 May 2019, received at the Court on 19 August 2019, in the proceedings

Land Baden-Württemberg

v

D.R.,

other parties:

Deutsche Bahn AG,

Vertreter des Bundesinteresses beim Bundesverwaltungsgericht,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan and N. Jääskinen, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Land Baden-Württemberg, by G. Torsten, Rechtsanwalt,

* Language of the case: German.

– D.R., by F.-U. Mann, Rechtsanwalt,

– Deutsche Bahn AG, by T. Krappel, Rechtsanwalt,

– the German Government, by J. Möller and S. Eisenberg, acting as Agents,

– Ireland, by M. Browne, J. Quaney and A. Joyce, acting as Agents,

– the United Kingdom Government, by S. Brandon, acting as Agent, and C. Knight, Barrister,

– the European Commission, by G. Gattinara and M. Noll-Ehlers, acting as Agents,

– the Norwegian Government, by L.-M. Moen Jünge and K. Isaksen, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 July 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4(1)(e) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26).

2 The request has been made in proceedings between Land Baden-Württemberg (the *Land* of Baden-Württemberg, Germany) and D.R., concerning an environmental information request seeking access to certain documents of the Staatsministerium Baden-Württemberg (State Ministry of the *Land* of Baden-Württemberg) relating to the 'Stuttgart 21' transport infrastructure and urban development project, in the Stuttgarter Schlossgarten (Stuttgart Castle Park, Germany).

Legal context

International law

3 The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'), states, in Article 4(3):

'A request for environmental information may be refused if:

…

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

…’

EU law

Regulation (EC) No 1049/2001

4 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) provides, in Article 4(3):

‘Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure.’

Regulation (EC) No 1367/2006

5 Article 3 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) provides:

‘Regulation [No 1049/2001] shall apply to any request by an applicant for access to environmental information held by [EU] institutions and bodies without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

…’

6 Article 6 of Regulation No 1367/2006, headed ‘Application of exceptions concerning requests for access to environmental information’, states, in paragraph 1:

‘As regards Article 4(2), first and third indents, of Regulation [No 1049/2001], with the exception of investigations …, an overriding public interest in disclosure shall be deemed to exist where the information requested relates to emissions into the environment. As regards the other exceptions set out in Article 4 of Regulation [No 1049/2001], the grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment.’

Directive 2003/4

7 Recitals 1, 5 and 16 of Directive 2003/4 are worded as follows:

'(1) Increased public access to environmental information and the dissemination of such information contribute to a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and, eventually, to a better environment.

…

(5) On 25 June 1998 the European Community signed the [Aarhus Convention]. Provisions of Community law must be consistent with that Convention with a view to its conclusion by the European Community.

…

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

8 As set out in Article 1 of Directive 2003/4:

'The objectives of this Directive are:

(a) to guarantee the right of access to environmental information held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise; and

(b) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information. …'

9 Article 2 of Directive 2003/4, headed 'Definitions', provides:

'For the purposes of this Directive:

1. "Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:
   (a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites including wetlands, coastal and marine areas, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;

…

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements;

…

(f) the state of human health and safety, including the contamination of the food chain, where relevant, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c).

2. "public authority" shall mean:
(a) government or other public administration, including public advisory bodies, at national, regional or local level;

…

3. "Information held by a public authority" shall mean environmental information in its possession which has been produced or received by that authority;

…

5. "Applicant" shall mean any natural or legal person requesting environmental information.

…'

10 Article 3 of Directive 2003/4, headed 'Access to environmental information upon request', provides, in paragraph 1:

'Member States shall ensure that public authorities are required, in accordance with the provisions of this Directive, to make available environmental information held by or for them to any applicant at his request and without his having to state an interest.'

11 As set out in Article 4 of Directive 2003/4, headed 'Exceptions':

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

…

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

(e) the request concerns internal communications, taking into account the public interest served by disclosure.

Where a request is refused on the basis that it concerns material in the course of completion, the public authority shall state the name of the authority preparing the material and the estimated time needed for completion.

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

(a) the confidentiality of the proceedings of public authorities, where such confidentiality is provided for by law;

…

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.

…

4. Environmental information held by or for public authorities which has been requested by an applicant shall be made available in part where it is possible to separate out any information falling within the scope of paragraphs 1(d) and (e) or 2 from the rest of the information requested.

5. A refusal to make available all or part of the information requested shall be notified to the applicant … The notification shall state the reasons for the refusal and include information on the review procedure provided for in accordance with Article 6.'

German law

12 Paragraph 28(2)(2) of the Umweltverwaltungsgesetz Baden-Württemberg (Law of the *Land* of Baden-Württemberg on environmental administration) of 25 November 2014 (GBl. 2014, 592), as amended by Article 1 of the Law of 28 November 2018 (GBl. 2018, 439), provides:

'Where a request … relates to internal communications of authorities required to provide information within the meaning of Paragraph 23(1), … it shall be refused unless the public interest in disclosure is stronger.'

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

13 The dispute in the main proceedings relates to a request which a natural person, that is to say, D.R., sent to the State Ministry of the *Land* of Baden-Württemberg, in order to obtain documents relating to tree felling in Stuttgart Castle Park in October 2010 which took place in the course of the 'Stuttgart 21' infrastructure and urban development project.

14 Those documents contain, first, an item of information transmitted to the management of the State Ministry of the *Land* of Baden-Württemberg relating to the carrying out of the work of the relevant committee of inquiry in respect of the police operation on 30 September 2010 in Stuttgart Castle Park, and second, notes of that ministry relating to the carrying out of a conciliation procedure on 10 and 23 November 2010 in connection with the 'Stuttgart 21' project.

15 The legal action which D.R. brought against the decision refusing him access was dismissed at first instance but upheld by the Verwaltungsgerichtshof Baden-Württemberg (Higher Administrative Court, Baden-Württemberg, Germany). The latter, after finding that the request forming the subject matter of the dispute in the main proceedings related to environmental information, held that no ground for refusing access applied to the documents requested by D.R. As regards, in particular, the ground for refusal laid down in respect of 'internal communications' of public authorities, it stated that that ground can no longer be relied upon once the decision-making process of the authority from which the communication is requested has been completed.

16 That judgment was challenged by Land Baden-Württemberg in an appeal on a point of law that it brought before the Bundesverwaltungsgericht (Federal Administrative Court, Germany).

17 That court proceeds on the basis of the premiss that D.R. requested access to environmental information, as defined in Article 2(1)(c) of Directive 2003/4, that is held by a public authority. By its questions, it seeks to determine whether that information should be classified as 'internal communications' which would accordingly be covered by the ground for refusal laid down in Article 4(1)(e) of Directive 2003/4 and, if so, whether the applicability of that ground for refusal is limited in time.

18 So far as concerns the first question referred, the Bundesverwaltungsgericht notes that Directive 2003/4 does not define the term 'internal communications', but does require, in accordance with the first sentence of the second subparagraph of Article 4(2) thereof, that the grounds for refusal listed in that article be interpreted restrictively.

19 In the light of that rule of interpretation, the Bundesverwaltungsgericht takes the view that the word 'internal' is capable of covering information which has not left the internal sphere of an authority, other than information which is intended to be disclosed. As regards the word 'communication', the question arises whether it denotes information of a certain quality and, in particular, whether it requires the information to be addressed to someone.

20 The referring court adds that it is apparent from the document published by the United Nations Economic Commission for Europe entitled 'The Aarhus Convention: An Implementation Guide' (Second edition, 2014) ('the Aarhus Convention Implementation Guide') that, in some countries, the 'internal communications' exception is intended to protect the personal opinions of government staff but does not apply to factual materials.

21 As to the second and third questions referred, relating to the temporal scope of Article 4(1)(e) of Directive 2003/4, the referring court takes the view that the wording of that provision militates against a strict limitation of its application in time. An indication to the contrary is not provided by the corresponding provision of the Aarhus Convention and the Aarhus Convention Implementation Guide. The position is otherwise in the case of the ground for refusal of access laid down in Article 4(1)(d) of that directive concerning material in the course of completion and unfinished documents or data, whose very wording limits its application in time.

22 The referring court states that, in the case of internal documents held by the European Parliament, the Council of the European Union and the European Commission, Article 4(3) of Regulation No 1049/2001 indeed permits their protection after the decision-making process has been completed. Regulation No 1367/2006, adopted specifically in order to apply the Aarhus Convention to EU institutions, did not alter that rule.

23 The ground for refusal laid down for 'internal communications' should, moreover, be compared with the ground for refusal laid down in Article 4(2)(a) of Directive 2003/4 which is intended to protect the confidentiality of the proceedings of public authorities. The latter ground also applies after the completion of decision-making processes, as follows from the judgment of the Court of 14 February 2012, *Flachglas Torgau* (C-204/09, EU:C:2012:71, paragraph 57). A broad interpretation of the ground for refusal laid down for 'internal communications' therefore could well render the ground for refusal relating to the confidentiality of proceedings meaningless.

24 Furthermore, in the light of the requirement to interpret the grounds for refusal restrictively, the Bundesverwaltungsgericht takes the view that the weighing of the interest served by disclosure against that served by the refusal of disclosure, required in Article 4(1)(e) and the second sentence of the second subparagraph of Article 4(2) of Directive 2003/4, could limit the ability to rely on the ground for refusal laid down for 'internal communications', in particular since, over time, the interest in maintaining the confidentiality of information diminishes.

25 Finally, if the scope of Article 4(1)(e) of Directive 2003/4 were to be limited in time, the duration of decision-making processes would not always be an appropriate criterion for the purpose of determining its ambit. In an administrative process, the examination of environmental information does not always lead to the adoption of a decision.

26 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Is [Article 4(1)(e)] of [Directive 2003/4] to be interpreted as meaning that the term "internal communications" covers all communications which do not leave the internal sphere of an authority which is required to provide information?

2. Is the temporal scope of the protection of "internal communications" under [Article 4(1)(e)] of [Directive 2003/4] unlimited?

3. If Question 2 is answered in the negative: Does the protection of "internal communications" under [Article 4(1)(e)] of [Directive 2003/4] apply only until the authority required to provide information has taken a decision or completed any other administrative process?'

Consideration of the questions referred

The first question

27 By its first question, the referring court asks whether 4(1)(e) of Directive 2003/4 must be interpreted as meaning that the term 'internal communications' covers all information which does not leave the internal sphere of a public authority.

28 First of all, it should be noted that, in adopting Directive 2003/4, the EU legislature intended to ensure the compatibility of EU law with the Aarhus Convention by providing for a general scheme to ensure that any applicant within the meaning of Article 2(5) of that directive has a right of access to environmental information held by or on behalf of the public authorities, without having to state an interest (see, to that effect, judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 31).

29 It should also be pointed out that the right of access guaranteed by Directive 2003/4 applies only to the extent that the information requested satisfies the requirements for public access that that directive lays down, which presupposes inter alia that the information is 'environmental information' within the meaning of Article 2(1) of the directive, a matter which is for the referring court to determine in the main proceedings (see, to that effect, judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 32).

30 As regards the aims pursued by Directive 2003/4, Article 1 states in particular that it seeks to guarantee the right of access to environmental information held by public authorities and to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public (judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 39).

31 However, the EU legislature provided, in Article 4 of Directive 2003/4, that the Member States may establish exceptions to the right of access to environmental information. In so far as such exceptions have in fact been transposed into national law, it is permissible for the public authorities to rely upon them in order to oppose requests for information that they receive.

32 In the present case, it is clear from the order for reference that Paragraph 28(2)(2) of the Law of the *Land* of Baden-Württemberg on environmental administration transposed the exception, provided for in Article 4(1)(e) of Directive 2003/4, under which a request for environmental information may be refused if the request concerns internal communications, taking into account the public interest served by disclosure.

33 As is apparent from the scheme of Directive 2003/4 and, in particular, from the second subparagraph of Article 4(2) and recital 16, the right to information means that the disclosure of information should be the general rule and that public authorities should be permitted to refuse a request for environmental information only in a few specific and clearly defined cases. The exceptions to the right of access should, consequently, be interpreted restrictively, in such a way that the public interest served by disclosure is weighed against the interest served by the refusal of disclosure (judgment of 28 July 2011, *Office of Communications*, C-71/10, EU:C:2011:525, paragraph 22).

34 Furthermore, according to settled case-law, the need for the uniform application of EU law and the principle of equality require that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 37).

35 It is in the light of those considerations that the internal communications exception to the right of access, laid down in Article 4(1)(e) of Directive 2003/4, should be interpreted.

36 Directive 2003/4 does not define the term 'internal communications' and makes no reference to the law of the Member States in that regard. A uniform interpretation of that term should therefore be provided, in accordance with the case-law referred to in paragraph 34 of the present judgment.

37 As regards, first, the word 'communication' used in Article 4(1)(e) of Directive 2003/4, as the Advocate General has observed in points 20 and 21 of his Opinion, this word relates to information addressed by an author to someone, an addressee who or which may be an abstract entity – such as 'members' of an administration or the 'executive board' of a legal person – or a specific person belonging to that entity, such as a member of staff or an official.

38 That interpretation of the term 'communication' is supported by the context of Article 4(1)(e) of Directive 2003/4.

39 Article 4(3)(c) of the Aarhus Convention indeed provides for an exception to the right of access to environmental information where a request concerns material in the course of completion or concerns internal communications of public authorities. That provision thus distinguishes the term 'material' from the term 'communication'.

40 As the Advocate General has observed in points 23 and 24 of his Opinion, the same distinction was adopted by the EU legislature, which transposed Article 4(3)(c) of the Aarhus Convention by two separate provisions. On the one hand, Article 4(1)(d) of Directive 2003/4 contains an exception concerning material in the course of completion or unfinished documents or data and, on the other, Article 4(1)(e) provides for the exception relating to internal communications. It follows that the term 'communication' and the terms 'material' or 'document' should be given separate meanings. In particular, unlike the former term, the latter do not necessarily concern information that is addressed to someone.

41 As regards, second, the word 'internal', it is clear from Article 3(1) of Directive 2003/4 that the environmental information to which that directive is designed to grant access is held by public authorities. In accordance with Article 2(3) of the directive, that is so in the case of information in an authority's possession which has been produced or received by it. In other words, public authorities which hold environmental information may have it at their disposal, process it and analyse it internally, and decide on its disclosure.

42 It follows that not all environmental information held by a public authority is necessarily 'internal'. That is so only in the case of information which does not leave the internal sphere of a public authority, in particular when it has not been disclosed to a third party or been made available to the public.

43 Where a public authority holds environmental information that it has received from an external source, that information may also be 'internal' if it was not or should not have been made available to the public before that authority received it and it does not leave that authority's internal sphere after it received it.

44 That interpretation of the word 'internal' is supported by the objective pursued by the internal communications exception to the right of access to environmental information. It is apparent from the explanations relating to Article 4 of the proposal for a Directive of the European Parliament and of the Council on public access to environmental information presented by the Commission on 29 June 2000 (COM(2000) 402 final – COD 2000/0169, OJ 2000 C 337 E, p. 156) that, like the exception concerning material in the course of completion or unfinished documents, the exception permitting access to internal documents to be refused is intended to meet the need of public authorities to have a protected space in order to engage in reflection and to pursue internal discussions.

45 Such a need has also been recognised in respect of environmental information held by the EU institutions covered by Regulation No 1049/2001.

46 That regulation applies to any request for access to environmental information. Under Article 4(3) thereof, the EU institutions are able to refuse access to documents for internal use or containing opinions for internal use. That provision is thus intended to ensure that those institutions are able to enjoy a space for deliberation in order to be able to decide as to the policy choices to be made and the potential proposals to be submitted (see, to that effect, judgment of 4 September 2018, *ClientEarth* v *Commission*, C-57/16 P, EU:C:2018:660, paragraphs 99 and 109).

47 In the light of the considerations set out in paragraphs 37 to 46 of the present judgment, the exception to the right of access to environmental information that is laid down in Article 4(1)(e) of Directive 2003/4 for internal communications must be understood as concerning information that circulates within a public authority and which, on the date of the request for access, has not left the public authority's internal sphere – as the case may be, after being received by that authority – inter alia as a result of being disclosed to a third party or being made available to the public.

48 It is true that, as recalled in paragraph 33 of the present judgment, exceptions to the right of access should be interpreted restrictively, in such a way that the public interest served by disclosure is weighed against the interest served by the refusal of disclosure. However, that rule of interpretation cannot limit the scope of Article 4(1)(e) of Directive 2003/4 in disregard of its wording.

49 It follows that the fact that an item of environmental information may be liable to leave the internal sphere of a public authority at a given time, inter alia where it is intended to be published in the future, cannot cause the communication that contains it to cease immediately to be internal in nature.

50 Furthermore, there is nothing in the wording of Article 4(1)(e) of Directive 2003/4 to suggest that the term 'internal communications' should be interpreted as covering only the personal opinions of a public authority's staff and essential documents or as not including information of a factual nature. Such limitations would, moreover, be incompatible with that provision's objective, namely the creation, for public authorities, of a protected space in order to engage in reflection and to pursue internal discussions.

51 Nor can the scope of the term 'internal communications', as referred to in paragraphs 20, 49 and 50 of the present judgment, be limited by the taking into account of the Aarhus Convention and the Aarhus Convention Implementation Guide. First, as the Advocate General has observed in point 27 of his Opinion, Article 4(3)(c) of the Aarhus Convention does not itself restrict the scope of 'internal communications' according to their content or importance. Second, in its judgment of 16 February 2012, *Solvay and Others* (C-182/10, EU:C:2012:82, paragraph 27), the Court held that, while the Aarhus Convention Implementation Guide may be regarded as an explanatory document, capable of being taken into consideration if appropriate among other relevant material for the purpose of interpreting the Aarhus Convention, the observations in the guide have no binding force and do not have the normative effect of the provisions of the convention.

52 In the present instance, according to the information set out in the order for reference, the documents covered by the request for access at issue in the main proceedings contain, first, an item of information transmitted to the management of the State Ministry of the *Land* of Baden-Württemberg and, second, notes of that ministry relating to the carrying out of a conciliation procedure. The file before the Court does not show that this information originated outside that ministry. Subject to the checks which are for the referring court to carry out, it seems that those documents were drafted in order to relay information within the State Ministry of the *Land* of Baden-Württemberg and that they did not leave the internal sphere of that administration. It follows that those documents would be capable of being classified as 'internal communications' within the meaning of Article 4(1)(e) of Directive 2003/4.

53 In the light of the foregoing, the answer to the first question referred is that Article 4(1)(e) of Directive 2003/4 must be interpreted as meaning that the term 'internal communications' covers all information which circulates within a public authority and which, on the date of the request for access, has not left that authority's internal sphere – as the case may be, after being received by that authority, provided that it was not or should not have been made available to the public before it was so received.

The second question

54 By its second question, the referring court asks, in essence, whether Article 4(1)(e) of Directive 2003/4 must be interpreted as meaning that the applicability of the exception to the right of access to environmental information provided for by it in respect of internal communications of a public authority is limited in time.

55 Article 4(1)(e) of Directive 2003/4, like Article 4(3)(c) of the Aarhus Convention which it transposed into EU law, contains nothing to support the limitation of its application in time. Nor does the Aarhus Convention Implementation Guide provide any guidance in that regard.

56 In particular, unlike the exception to the right of access to environmental information which is set out in Article 4(1)(d) of Directive 2003/4 and concerns material in the course of completion and unfinished documents or data, the exception provided for in respect of internal communications is not linked to the development or drawing up of documents. Nor does it depend on the extent to which some administrative process has progressed. The end of such a process or of a stage thereof, marked by the adoption of a decision by a public authority or by the completion of a document, cannot, therefore, be the deciding factor for the applicability of Article 4(1)(e) of Directive 2003/4.

57 The lack of temporal limitation of the scope of that provision tallies with its objective, set out in paragraphs 44 and 50 of the present judgment, namely the creation, for public authorities, of a protected space in order to engage in reflection and to pursue internal discussions. As the Advocate General has observed, in essence, in points 44 and 50 of his Opinion, in order to determine whether the need to protect the freedom of thought of the people behind the communication concerned and the ability to exchange views freely continues to exist, account should be taken of all the factual and legal circumstances of the case on the date on which the competent authorities have to take a decision on the request which has been made to them, since, as is clear from paragraph 34 of the judgment of 16 December 2010, *Stichting Natuur en Milieu and Others* (C-266/09, EU:C:2010:779), the right of access to environmental information crystallises on that date.

58 Whilst it is true that the exception provided for in Article 4(1)(e) of Directive 2003/4 is not limited in time, it is apparent, however, from that provision itself and the second subparagraph of Article 4(2) of the directive that refusal of access to environmental information on the ground that it is included in an internal communication must always be founded on a weighing of the interests involved.

59 It is clear from the Court's case-law that the interests must be weighed on the basis of an actual and specific examination of each situation brought before the competent authorities in connection with a request for access to environmental information made on the basis of Directive 2003/4, but the national legislature is not precluded from determining, by a general provision, criteria to facilitate that comparative assessment of the interests involved (see, to that effect, judgments of 16 December 2010, *Stichting Natuur en Milieu and Others*, C-266/09, EU:C:2010:779, paragraph 58, and of 28 July 2011, *Office of Communications*, C-71/10, EU:C:2011:525, paragraph 29).

60 In the case of Article 4(1)(e) of Directive 2003/4, that examination is especially important since the material scope of the exception to the right of access to environmental information which that provision lays down for internal documents is particularly broad. Thus, in order not to render Directive 2003/4 meaningless, the weighing of the interests involved that is required in Article 4(1)(e) and the second subparagraph of Article 4(2) of the directive must be tightly controlled.

61 Since, as has been noted in paragraph 28 of the present judgment, Directive 2003/4 is intended to ensure that any applicant within the meaning of Article 2(5) of the directive has a right of access to environmental information held by or on behalf of the public authorities, without having to state an interest, the authority to which a request for access has been made cannot require the applicant to set out a specific interest justifying disclosure of the environmental information sought.

62 It is apparent from recital 1 of Directive 2003/4 that the reasons which may support disclosure and which an authority must in any event take into account when weighing the interests involved include bringing about 'a greater awareness of environmental matters, a free exchange of views, more effective participation by the public in environmental decision-making and … a better environment (see, to that effect, judgment of 28 July 2011, *Office of Communications*, C-71/10, EU:C:2011:525, paragraphs 25 and 26).

63 Since, as noted in paragraph 59 of the present judgment, the examination of a request for access must take account of the specific interests involved in each particular case, the public authority is also required to examine any particulars provided by the applicant as to the grounds that may justify disclosure of the information sought.

64 In addition, public authorities to which a request for access to environmental information contained in an internal communication has been made must take into account the time that has passed since that communication and the information that it contains were drawn up. The exception referred to in Article 4(1)(e) of Directive 2003/4 to the right of access to environmental information can apply only for the period during which protection is justified in the light of the content of such a communication (see, by analogy, judgment of 26 January 2010, *Internationaler Hilfsfonds* v *Commission*, C-362/08 P, EU:C:2010:40, paragraph 56).

65 In particular, if, in the light of the objective of creating, for public authorities, a protected space in order to engage in reflection and to pursue internal discussions, information contained in an internal communication could properly not be disclosed on the date of the request for access, a public authority may, on the other hand, be led to take the view that, on account of its age, the information has become historical and that it is accordingly no longer sensitive, where some time has passed since it was drawn up (see, by analogy, judgment of 19 June 2018, *Baumeister*, C-15/16, EU:C:2018:464, paragraph 54).

66 Furthermore, when a public authority examines a request for access to environmental information that has been made to it, it must establish, in accordance with Article 4(4) of Directive 2003/4, whether some of the information sought may be separated out from the information covered by the applicable exception to the right of access, with the result that it may make partial disclosure.

67 Compliance with all the obligations which, as is apparent from paragraphs 58 to 66 of the present judgment, are owed by public authorities when they examine a request for access to environmental information, including, in particular, the obligation to weigh the interests involved, must be capable of being checked by the person concerned and be open to scrutiny in the administrative and judicial review procedures provided for at national level, in accordance with Article 6 of Directive 2003/4.

68 In order to meet that requirement, Article 4(5) of Directive 2003/4 provides that a decision refusing access is to be notified to the applicant and to contain the reasons for refusal on which it is based.

69 As the Advocate General has observed in point 34 of his Opinion, that obligation to state reasons is not fulfilled where a public authority merely refers formally to one of the exceptions provided for in Article 4(1) of Directive 2003/4. On the contrary, a public authority which adopts a decision refusing access to environmental information must set out the reasons why it considers that the disclosure of that information could specifically and actually undermine the interest protected by the exceptions relied upon. The risk of that interest being undermined must be reasonably foreseeable and not purely hypothetical (see, by analogy, judgment of 21 July 2011, *Sweden* v *MyTravel and Commission*, C-506/08 P, EU:C:2011:496, paragraph 76).

70 In the light of all the foregoing considerations, the answer to the second question referred is that Article 4(1)(e) of Directive 2003/4 must be interpreted as meaning that the applicability of the exception to the right of access to environmental information provided for by it in respect of internal communications of a public authority is not limited in time. However, that exception can apply only for the period during which protection of the information sought is justified.

The third question

71 In the light of the answer to the second question, it is no longer necessary to reply to the third question.

Costs

72 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 (First Chamber) hereby rules:

1. **Article 4(1)(e) of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC must be interpreted as meaning that the term 'internal communications' covers all information which circulates within a public authority and which, on the date of the request for access, has not left that authority's internal sphere – as the case may be, after being received by that authority, provided that it was not or should not have been made available to the public before it was so received.**

2. **Article 4(1)(e) of Directive 2003/4 must be interpreted as meaning that the applicability of the exception to the right of access to environmental information provided for by it in respect of internal communications of a public authority is not limited in time. However, that exception can apply only for the period during which protection of the information sought is justified.**

[Signatures]