ECLI:EU:C:2016:890

JUDGMENT OF THE COURT (Fifth Chamber)

23 November 2016 *(1)

(Reference for a preliminary ruling — Environment — Aarhus Convention — Directive 2003/4/EC — Article 4(2) — Public access to information — Concept of 'information relating to emissions into the environment' — Directive 91/414/EEC — Directive 98/8/EC — Regulation (EC) No 1107/2009 — Placing of plant protection products and biocides on the market — Confidentiality — Protection of industrial and commercial interests)

In Case C-442/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands), made by decision of 12 September 2014, received at the Court on 24 September 2014, in the proceedings

Bayer CropScience SA-NV,

Stichting De Bijenstichting

v

College voor de toelating van gewasbeschermingsmiddelen en biociden,

third party:

Makhtesim-Agan Holland BV,

THE COURT (Fifth Chamber),

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

Advocate General: J. Kokott,

Registrar: M. Ferreira, Principal Administrator,

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

after considering the observations submitted on behalf of:

– Bayer CropScience SA-NV, by E. Broeren and A. Freriks, advocaten,

– Stichting De Bijenstichting, by L. Smale, advocaat,

– the College voor de toelating van gewasbeschermingsmiddelen en biociden, by J. Geerdink and D. Roelands-Fransen, advocaten,

– the Netherlands Government, by B. Koopman and M. Bulterman, acting as Agents,

– the German Government, by T. Henze and A. Lippstreu, acting as Agents,

– the Greek Government, by I. Chalkias and by O. Tsirkinidou and A. Vasilopoulou, acting as Agents,

– the Swedish Government, by L. Swedenborg and E. Karlsson and by A. Falk, C. Meyer-Seitz, U. Persson and N. Otte Widgren, acting as Agents,

– the European Commission, by L. Pignataro-Nolin and by F. Ronkes Agerbeek, P. Ondrusek and H. Kranenborg, acting as Agents,

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 14 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1), Article 19 of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ 1998 L 123, p. 1), Articles 59 and 63 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ 2009 L 309, p. 1) and Article 4(2) 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 Bayer CropScience BV ('Bayer') and Stichting De Bijenstichting ('Bijenstichting') and the College voor de toelating van gewasbeschermingsmiddelen en biociden (the Plant Protection Products and Biocides Approval Board, 'the CTB') concerning the decision of 18 March 2013 by which the CTB, in essence, partially upheld Bijenstichting's request for disclosure of documents submitted by Bayer during procedures for the authorisation of the placing on the Dutch market of certain plant protection products and biocides based on the active ingredient imidacloprid.

Legal context

International law

3 Article 39(3) of the Agreement on Trade-Related Aspects of Intellectual Property Rights ('the TRIPS Agreement'), which constitutes Annex 1C to the Agreement establishing the World Trade Organisation (WTO), signed in Marrakesh on 15 April 1994 and approved by Council Decision 94/800/EC of 22 December 1994 concerning the conclusion on behalf of the European Community, as regards matters within its competence, of the agreements reached in the Uruguay Round multilateral negotiations (1986-1994) (OJ 1994 L 336, p. 1), provides as follows:

'Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilise new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.'

4 Article 4 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) ('the Aarhus Convention'), entitled 'Access to environmental information', provides as follows:

'1. Each party shall ensure that, subject to the following paragraphs of this article, public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation …

…

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

…

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

…

The aforementioned grounds for refusal shall be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment.

...'

EU law

Rules on authorisation to place plant protection products and biocides on the market

5 Article 2(2) of Directive 91/414 defines 'residues of plant protection products' as follows:

'One or more substances present in or on plants or products of plant origin, edible animal products or elsewhere in the environment and resulting from the use of a plant protection product, including their metabolites and products resulting from their degradation or reaction.'

6 Article 14 of that directive provides as follows:

'Member States and the Commission shall, without prejudice to Directive [2003/4], ensure that information submitted by applicants involving industrial and commercial secrets is treated as confidential if the applicant wishing to have an active substance included in Annex I or the applicant for authorisation of a plant protection product so requests, and if the Member State or the Commission accepts that the applicant's request is warranted.

…'

7 Under Article 2(1)(g) of Directive 98/8, 'residues' is defined as follows:

'One or more of the substances present in a biocidal product which remains as a result of its use including the metabolites of such substances and products resulting from their degradation or reaction.'

8 According to Article 19 of that directive, entitled 'Confidentiality':

'1. Without prejudice to [Directive 2003/4], an applicant may indicate to the competent authority the information which he considers to be commercially sensitive and

disclosure of which might harm him industrially or commercially and which he therefore wishes to be kept confidential from all persons other than the competent authorities and the Commission. Full justification will be required in each case. …

2. The competent authority receiving the application shall decide, on the basis of documentary evidence produced by the applicant, which information shall be confidential within the terms of paragraph 1.

…'

9 Article 3(1) of Regulation No 1107/2009 defines 'residues' as follows:

'One or more substances present in or on plants or plant products, edible animal products, drinking water or elsewhere in the environment and resulting from the use of a plant protection product, including their metabolites, breakdown or reaction products;

…'

10 Article 33 of that regulation, entitled 'Application for authorisation or amendment of an authorisation', provides as follows:

'1. An applicant who wishes to place a plant protection product on the market shall apply for an authorisation or amendment of an authorisation himself, or through a representative, to each Member State where the plant protection product is intended to be placed on the market.

…

4. When submitting the application, the applicant may, pursuant to Article 63, request certain information, including certain parts of the dossier, to be kept confidential and shall physically separate that information.

…

Upon a request for access to information the Member State examining the application shall decide what information is to be kept confidential.

…'

11 Article 63 of that regulation, entitled 'Confidentiality', provides as follows:

'1. A person requesting that information submitted under this regulation is to be treated as confidential shall provide verifiable evidence to show that the disclosure of the information might undermine his commercial interests …

2. Disclosure of the following information shall normally be deemed to undermine the protection of the commercial interests or of privacy and the integrity of the individuals concerned:

(a) the method of manufacture;

(b) the specification of impurity of the active substance except for the impurities that are considered to be toxicologically, ecotoxicologically or environmentally relevant;

(c) results of production batches of the active substance including impurities;

(d) methods of analysis for impurities in the active substance as manufactured except for methods for impurities that are considered to be toxicologically, ecotoxicologically or environmentally relevant;

(e) links between a producer or importer and the applicant or the authorisation holder;

(f) information on the complete composition of a plant protection product;

(g) names and addresses of persons involved in testing on vertebrate animals.

3. This Article shall be without prejudice to Directive [2003/4].'

Rules on access to environmental information

12 Recitals 1, 5, 9 and 16 of Directive 2003/4 read 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.

…

(9) It is also necessary that public authorities make available and disseminate environmental information to the general public to the widest extent possible, in particular by using information and communication technologies. …

…

(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. …'

13 Article 1 of the directive provides as follows:

'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. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted.'

14 Article 2 of the directive, entitled 'Definitions', provides as follows:

'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;

(b) factors, such as substances, energy, noise, radiation or waste, including radioactive waste, emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

…'

15 Under Article 3(1) of the directive, entitled 'Access to environmental information upon request':

'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.'

16 Article 4(2) of Directive 2003/4 entitled 'Exceptions', provides:

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

...

(d) the confidentiality of commercial or industrial information where such confidentiality is provided for by national or Community law to protect a legitimate economic interest, including the public interest in maintaining statistical confidentiality and tax secrecy;

...

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.

…’

Rules applicable to industrial emissions

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

‘For the purposes of this Directive:

…

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

…

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

…’

18 Article 3(3) and (4) of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17) provides as follows:

‘For the purposes of this Directive:

…

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

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

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

19 By decisions of 28 April and 8 July 2011, the CTB, the competent Dutch authority for the granting and amending of authorisations to place plant protection products and biocides on the market, decided to amend the authorisations of several plant protections products and one biocide on the basis of the active ingredient imidacloprid, which, inter alia, has an insecticide effect.

20 By letters of 11 May, 24 August and 25 October 2011, Bijenstichting, a Dutch association for the protection of bees, made a request, on the basis of Directive 2003/4 to the CTB for disclosure of 84 documents concerning those authorisations.

21 Bayer, a company operating, inter alia, in the fields of crop protection and pest control and the holder of a large number of those authorisations, objected to that disclosure, on the ground that it would infringe copyright and adversely affect the confidentiality of commercial or industrial information and, furthermore, would completely undermine the right to data protection.

22 By decision of 9 July 2012, the CTB, initially, refused Bijenstichting’s requests for disclosure in their entirety. In support of that refusal, the CTB in particular took the view that those requests did not relate to ‘information on emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4. Accordingly, those requests could be upheld only if the weighing of the general interest in disclosure, on the one hand, against the specific interest of the marketing authorisation holder in the confidentiality of the data in question, on the other hand, justified their disclosure, which, in the view of the CTB, was, however, not so in the present case.

23 Following an appeal by Bijenstichting against that refusal, the CTB, at a second stage, partially reversed the earlier decision and, by decision of 18 March 2013, declared that appeal to be well founded in part.

24 Consequently, in that decision, the CTB considered that factual information relating to actual emissions of plant protection products or biocides into the environment should be regarded as 'information on emissions into the environment', within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4.

25 In the present case, 35 of the documents in respect of which disclosure was requested contained, according to the CTB, such information. Consequently, the grounds which could be relied on in order to refuse such disclosure were, according to that authority, very restricted. Those grounds included protection of the intellectual property rights of the holder of the authorisation to place the product in question on the market. However, as regards the weighing of the general interest in disclosure against the protection of those rights, the CTB considered that the former should prevail. Consequently, it ordered the disclosure of those documents.

26 The 35 documents included, inter alia, laboratory studies concerning the effects of imidacloprid on bees, and studies performed partly in the field measuring the residues of plant protection products and biocides and their active ingredients present after use of those products in the air or soil, in seeds, leaves, pollen or nectar of the treated plant, as well as in honey and on bees. Those documents also include a summary of a study concerning imidacloprid migration in plants and guttation fluid, that is to say the secretion of water droplets by a plant, and two presentations.

27 As regards the remaining 49 documents, the CTB, by contrast, considered that they did not relate to 'information on emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4. Consequently, access to those 49 documents could, according to the CTB, be refused on the basis not only of protection of intellectual property rights, but also on the basis of the confidentiality of commercial or industrial information. After weighing, in accordance with that provision, the relevant interests, the CTB refused to disclose those documents.

28 Both Bijenstichting and Bayer challenged the decision of the CTB of 18 March 2013 before the referring court, the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry, Netherlands).

29 In order to resolve the dispute before it, that court raises questions, inter alia, concerning the relationship between, on the one hand, the rules on confidentiality laid down by the specific legislation concerning the placing of plant protection products and biocides on the market, namely, at the time of the facts in the main proceedings, Directives 91/414 and 98/8 and Regulation No 1107/2009 and, on the other hand, the general rules on access to information in environmental matters governed by Directive 2003/4.

30 In particular, the referring court asks whether, as Bijenstichting submits, the confidentiality of the information requested by the latter ought to have been recognised by the CTB, upon Bayer's request, at the latest at the time of the amendment to the authorisation to place the products in question on the market, or whether, as the CTB

maintains, the confidential nature of that information could also be recognised subsequently, in the context of Bayer's objection to the requests for access to that information made subsequently by Bijenstichting on the basis of Directive 2003/4, even though those requests concerned information for which Bayer had not requested confidential treatment at the time of the procedure for amendment of the marketing authorisation.

31 In the first scenario, the CTB should have upheld all the requests for disclosure made by Bijenstichting, without, where appropriate, being able to refuse those requests pursuant to Article 4(2) of Directive 2003/4. By contrast, in the second scenario, the CTB could have taken into account Bayer's comments concerning the confidentiality of the information which were made for the first time at the time of those requests.

32 Moreover, the referring court also has doubts as to the interpretation of 'information on emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 and asks whether the information to which Bijenstichting requested access is covered by that concept.

33 If the answer is in the affirmative, the requests for disclosure made by the latter could not, in accordance with that provision, be refused on the ground that that disclosure would adversely affect the confidentiality of commercial or industrial information submitted by Bayer. On the contrary, if the answer is in the negative, in order to establish whether that information should be disclosed, it would be necessary to weigh the interest relating to the confidentiality of that information against the public interest served by that disclosure.

34 In those circumstances the College van Beroep voor het bedrijfsleven (Administrative Court of Appeal for Trade and Industry) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Do the provisions of Article 14 of Directive 91/414, and Article 63, read in conjunction with Article 59 of Regulation No 1107/2009 and Article 19 of Directive 98/8, respectively, mean that a request for confidentiality, as referred to in the aforementioned Articles 14, 63 and 19 from an applicant referred to in those articles, must be decided on for each individual information source before or when granting the authorisation, or before or when amending the authorisation, respectively, by means of a decision which can be made known to interested third parties?

(2) If the previous question is answered in the affirmative: must Article 4(2) of Directive 2003/4 be interpreted as meaning that in the absence of a decision as referred to in the previous question, the respondent, as a national authority, is obliged to disclose the environmental information requested when such a request is made after the granting of the authorisation or after the amendment of the authorisation respectively?

(3) How must the term "emissions into the environment" in [the second subparagraph of] Article 4(2) of Directive 2003/4 be interpreted, given what the parties have stated in

that regard in Section 5.5 [of the decision of the referring court], against the background of the content of the documents as set out in Section 5.2 [of that decision]?

(4) (a) Can data which provide an estimate of the release into the environment of a product, its active ingredient(s) and other components as a result of the use of the product be deemed to be "information on emissions into the environment"?

(b) If so, does it matter whether those data have been obtained by means of (semi-) field studies or other types of studies (such as, for example, laboratory studies and translocation studies)?

(5) Can laboratory studies be deemed to be "information on emissions into the environment" when the test is aimed at examining isolated aspects under standardised conditions and in that framework many factors, such as, for example (climatological influences) are excluded and the tests are often conducted with — in comparison with customary practice — high dosages?

(6) In that regard, must residues after the application of the product in the experimental set-up, in, for example, the air or on the ground, leaves, pollen or nectar of a crop (which is derived from treated seed), in honey or on non-target organisms also be included under "emissions into the environment"?

(7) And is that also the case in respect of the measurement of the (substance's) drift when the product is applied in the experimental set-up?

(8) Do the words "information on emissions into the environment", as referred to in the second subparagraph of Article 4(2) [of Directive 2003/4], mean that, if there are emissions into the environment, the information source must be disclosed in its entirety and not be limited to the (measurement) data which may, where applicable, be derived therefrom?

(9) Does the application of the exception relating to commercial or industrial information within the meaning of point (d) of [the first subparagraph of] Article 4(2) [of Directive 2003/4] require a distinction to be made between "emissions", on the one hand, and "discharges and other releases into the environment" within the meaning of Article 2(1)(b) of [that directive], on the other hand?'

The application to reopen the oral procedure

35 Following the delivery of the Advocate General's Opinion on 7 April 2016, Bayer, by document lodged at the Court Registry on 9 May 2016, applied for the oral part of the procedure to be reopened.

36 In support of that application, Bayer maintains, first, that it is for the national court alone to determine whether the information at issue in the main proceedings referred to in the fourth to eighth questions submitted for a preliminary ruling relates to 'emissions into

the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4. However, if the Court, following the example of the Advocate General, decides to adopt a position on those questions, Bayer seeks to reopen the oral part of the procedure so that the Court might have access to the documents to which Bijenstichting has requested access and establish, on that basis, whether the information contained in those documents relates to 'emissions into the environment'. Next, Bayer considers that the answers to the questions referred as proposed by the Advocate General disregard the complete and comprehensive system of disclosure of documents implemented by Directives 91/414 and 98/8 and by Regulation No 1107/2009. Finally, in the event that the Court considers that the information at issue in the main proceedings concerns emissions into the environment, Bayer asks the Court also to examine the question of the specific arrangements for access to that information and in particular whether disclosure in a reading room would be acceptable.

37 In that regard, it must be pointed out at the outset, first, that neither the Statute of the Court of Justice of the European Union nor its Rules of Procedure make provision for the parties to submit observations in response to the Advocate General's Opinion (see, inter alia, order of 4 February 2000, *Emesa Sugar*, C-17/98, EU:C:2000:69, paragraph 2, and judgment of 6 September 2012, *Döhler Neuenkirchen*, C-262/10, EU:C:2012:559, paragraph 29).

38 Secondly, it should be pointed out that the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, under Article 83 of its Rules of Procedure, in particular if it considers that it lacks sufficient information or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union (see, inter alia, judgment of 28 April 2016, *Borealis Polyolefine and Others*, C-191/14, C-192/14, C-295/14, C-389/14 and C-391/14 to C-393/14, EU:C:2016:311, paragraph 40).

39 In the present case, it must be noted that the application to reopen the oral part of the procedure made by Bayer seeks in essence to reply to the Advocate General's Opinion. Furthermore, the Court considers that it has sufficient information to be able to adjudicate and that the present case does not need to be decided on the basis of arguments which have not been debated between the parties.

40 As a result, the application must be dismissed.

Consideration of the questions referred

Questions 1 and 2

41 By its first two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4(2) of Directive 2003/4, read in conjunction with Article 14 of Directive 91/414, Article 19 of Directive 98/8 and Article 33(4) and Article 63 of Regulation No 1107/2009 must be interpreted as meaning that, if the

applicant for an authorisation to place a plant protection product or biocide on the market has not, during the procedure laid down for obtaining that authorisation, requested that the information submitted in the context of that procedure be treated as confidential, the competent authority, having received after the closure of that procedure a request from a third party for access to that information on the basis of Directive 2003/4, is required to grant it, without being able to examine that applicant's objection to the request for access and, if necessary, refuse it on the ground that the disclosure of the information in question would adversely affect the confidentiality of commercial or industrial information.

42 In order to answer those questions, it must be noted that, in accordance with Article 14 of Directive 91/414, Article 19 of Directive 98/8 and Article 33(4) and Article 63 of Regulation No 1107/2009, an applicant for an authorisation to place a plant protection product or biocide on the market may, in the context of the procedure laid down for obtaining that authorisation, request confidential treatment of information which constitutes an industrial or commercial secret or which it regards as commercially sensitive whose dissemination could cause the applicant harm industrially or commercially.

43 However, the first subparagraph of Article 14 of Directive 91/414, Article 19(1) of Directive 98/8 and Article 63 of Regulation No 1107/2009 also provide that those provisions are to apply without prejudice to Directive 2003/4.

44 Consequently, it is apparent that the EU legislature intended to subject requests for access by third parties to information contained in application dossiers for authorisation to place plant protection products or biocides on the market, in respect of which confidential treatment may be requested pursuant to the abovementioned provisions, to the general provisions of Directive 2003/4 (see, *a contrario*, judgment of 22 December 2010, *Ville de Lyon*, C-524/09, EU:C:2010:822, paragraph 40).

45 Article 4(2) of that directive authorises Member States to provide for a request for access to environmental information to be refused if disclosure of that information would adversely affect any of the interests referred to in that article, inter alia, the confidentiality of commercial or industrial information.

46 That provision does not require submission of a request for confidential treatment prior to the request for disclosure.

47 It follows that, contrary to Bijenstichting's claim, the competent authority, which, on the basis of Directive 2003/4 has received a request for access to information submitted by the applicant for an authorisation to place a plant protection product or biocide on the market in the context of the procedure for obtaining that authorisation, is not required to grant it and to disclose the information requested on the sole ground that the applicant did not request earlier that the information be treated confidentially, in the context of that procedure.

48 Therefore, that authority must be able to examine, as appropriate on the basis of that applicant's objection, whether that disclosure would adversely affect the confidentiality of commercial or industrial information and whether that request should not be refused pursuant to point (d) of the first subparagraph of Article 4(2) of that directive.

49 In the light of the above, the answer to the first two questions is that Article 4(2) of Directive 2003/4 must be interpreted as meaning that the fact that the applicant for authorisation to place a plant protection product or biocide on the market, did not, during the procedure for obtaining that authorisation, request that information submitted under that procedure be treated as confidential on the basis of Article 14 of Directive 91/414, Article 19 of Directive 98/8 or Article 33(4) and Article 63 of Regulation No 1107/2009 does not preclude the competent authority, which has received, following the closure of that procedure, a request for access to the information submitted on the basis of Directive 2003/4 by a third party, from examining the applicant's objection to that request for access and refusing it, if necessary, pursuant to point (d) of the first subparagraph of Article 4(2) of that directive on the ground that the disclosure of that information would adversely affect the confidentiality of commercial or industrial information.

Questions 3 to 7 and 9

50 By its third to seventh and ninth questions, which should be examined together, the referring court asks, in essence, whether releases of plant protection products or biocides, or the substances contained in those products, into the environment fall within the scope of 'emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 and, if the answer is in the affirmative, whether data relating to the evaluation of those releases into the environment and the effects of those releases, including data from studies performed entirely or in part in the field and from laboratory or translocation studies, information relating to residues in the environment following application of the product in question and studies on the measurement of the substance's drift during that application fall within the scope of 'information on emissions into the environment' within the meaning of that provision.

51 While it is a matter for the referring court to determine whether the various documents to which access is, in the present case, requested by Bijenstichting fall with the scope of 'information relating to emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4, it is, however, for the Court of Justice to point out to it the objective elements which must prevail in such an assessment.

52 In that regard, at the outset, it must be stressed that since that directive defines neither 'emissions into the environment' nor 'information relating to emissions into the environment' the interpretation of those concepts must take into account the context of the second subparagraph of Article 4(2) of that directive and its objective.

53 First, as recital 5 of Directive 2003/4 confirms, in adopting that directive the EU legislature intended to ensure the consistency of EU law with the Aarhus Convention with a view to its conclusion by the Community, by providing for a general scheme to ensure that any natural or legal person in a Member State has a right of access to environmental information held by or on behalf of public authorities, without that person having to state an interest (see, inter alia, judgment of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 36).

54 It follows that, for the purposes of interpreting Directive 2003/4, account is to be taken of the wording and aim of the Aarhus Convention, which that directive is designed to implement in EU law (see, inter alia, judgment of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 37) and, in particular, point (d) of the first subparagraph of Article 4(4) of that convention which provides that the confidentiality of commercial and industrial information may not be invoked against the disclosure of information on emissions relevant for the protection of the environment.

55 Secondly, in accordance with the Court's settled case-law, the objective of Directive 2003/4 is to ensure a general principle of access to environmental information held by or for public authorities and, as is apparent from recital 9 and Article 1 of that directive, to achieve the widest possible systematic availability and dissemination to the public of environmental information (see, inter alia, judgment of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 66).

56 It follows that, as expressly provided for in the second subparagraph of Article 4(4) of the Aarhus Convention and recital 16 and the second subparagraph of Article 4(2) of Directive 2003/4, the disclosure of information must be the general rule and the grounds for refusal referred to by those provisions must be interpreted in a restrictive way (see, inter alia, judgments of 16 December 2010, *Stichting Natuur en Milieu and Others*, C-266/09, EU:C:2010:779, paragraph 52, and of 28 July 2011, *Office of Communications*, C-71/10, EU:C:2011:525, paragraph 22).

57 By establishing that the confidentiality of commercial or industrial information may not be invoked against the disclosure of 'information relating to emissions into the environment', the second subparagraph of Article 4(2) of Directive 2003/4 allows for specific application of that rule and of the principle of the widest possible access to the environmental information held by or for public authorities.

58 It follows that, contrary to what, inter alia, Bayer, the German Government and the European Commission submit, it is not necessary to apply a restrictive interpretation of 'emissions into the environment' and 'information on emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4.

59 It is in the light of those considerations that the questions referred must be answered.

– The concept of 'emissions into the environment'

60 In order to interpret ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4, it is necessary to establish whether, as Bayer, the German Government and the Commission maintain, a distinction must be made between that concept and those of ‘discharges’ and ‘releases’, and whether that concept must be restricted to emissions covered by Directive 2010/75, namely emissions emanating from certain industrial installations specified therein, or whether that concept also covers releases into the environment of products or substances such as plant protection products or biocides and the substances contained in those products.

61 As regards, in the first place, the question whether a distinction must be made between ‘emissions’ and ‘discharges’ and ‘releases’, it should be pointed out that Article 2(1)(b) of Directive 2003/4, which lists the factors which may fall within the scope of ‘environmental information’, appears, prima facie, to establish such a distinction.

62 However, first, no such distinction is made by the Aarhus Convention which merely provides in point (d) of the first subparagraph of Article 4(4) that the confidentiality of commercial and industrial information may not be invoked against the disclosure of ‘information on emissions which is relevant for the protection of the environment’.

63 Secondly, as set out in point 59 of the Advocate General’s Opinion, a distinction between emissions, discharges and other releases is irrelevant in the light of the objective of Directive 2003/4 concerning the disclosure of environmental information and would be artificial.

64 Emissions of gas or substances into the atmosphere and other releases or discharges such as the release of substances, preparations, organisms, micro-organisms, vibrations, heat or noise into the environment, in particular into air, water or land, may affect those various elements of the environment.

65 Furthermore, the concepts of ‘emissions’, ‘discharges’ and ‘releases’ broadly coincide, as shown by the use of the expression ‘other releases’ in Article 2(1)(b), of that directive from which it follows that emissions and discharges are also releases into the environment.

66 Numerous European Union acts, such as Directive 2010/75 and also Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56), and Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ 2006 L 33, p. 1) largely equate the concepts of ‘emissions’ and ‘releases’ and ‘discharges’.

67 It follows that it is not necessary, for the purposes of interpreting ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 to draw a distinction between that concept and those of ‘discharges’ and ‘releases’ into the environment.

68 In the second place, it remains to be established whether, as Bayer, the German Government and the Commission submit, the concept of ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 should be restricted to emissions covered by Directive 2010/75 — namely, in accordance with Article 3(4) of that directive, to the direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources in certain industrial installations defined therein into air, water or land —, excluding emissions emanating from other sources such as those arising from a product being sprayed in the air or applied to plants, in water or on land.

69 It is true that the 2000 edition of the Aarhus Convention Implementation Guide proposed, in order to define the concept of ‘emissions’ to use the definition of that concept set out in Article 2(5) of Directive 96/61 which was reproduced in identical terms in Article 3(4) of Directive 2010/75, and the 2014 edition now refers to the definition set out in the latter provision.

70 However, by virtue of the Court’s settled case-law, while that 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 indications contained therein have no binding force and do not have the normative effect of the provisions of that convention (see, inter alia, judgment of 19 December 2013, *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 38 and the case-law cited).

71 Nothing in the Aarhus Convention or in Directive 2003/4 permits the view that the concept of ‘emissions into the environment’ should be restricted to emissions emanating from certain industrial installations.

72 Moreover, such a restriction would be contrary to the express wording of point (d) of the first subparagraph of Article 4(4) of that convention. That provision states that information on emissions which is relevant for the protection of the environment must be disclosed. Information concerning emissions emanating from sources other than industrial installations, such as those resulting from the application of plant protection products or biocides, are just as relevant to environmental protection as information relating to emissions of industrial origin.

73 Furthermore, restriction of the concept of ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 to emissions emanating from certain industrial installations would be contrary to that directive’s objective of the widest possible disclosure of environmental information.

74 Consequently, such an interpretation of that concept cannot be accepted.

75 It follows from the above that it is not necessary to make a distinction between the concept of ‘emissions into the environment’ and those of ‘discharges’ and ‘releases’ or to confine that concept to the emissions covered by Directive 2010/75, excluding the release of products or substances into the environment emanating from sources other than industrial installations.

76 Consequently, ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 may not exclude the release into the environment of products and substances such as plant protection products or biocides and the substances contained in those products.

77 However, that concept must nevertheless be limited to non-hypothetical emissions, that is to say actual or foreseeable emissions from the product or substance in question under normal and realistic conditions of use.

78 In that regard, although the placing of a product on the market alone is not sufficient in general to consider that that product must necessarily be released into the environment and that information concerning it relates to ‘emissions into the environment’, the situation is different as regards a product, such as a plant protection product or biocide, which is, in the context of normal use, intended to be released into the environment by virtue of its function. Therefore the foreseeable emissions from that product into the environment are not, in the latter case, hypothetical.

79 Under those circumstances, ‘emissions into the environment’ covers emissions which are actually released into the environment at the time of the application of the product or substance in question and foreseeable emissions from that product or that substance into the environment under normal or realistic conditions of use of that product or substance corresponding to those under which the authorisation to place the product in question on the market is granted and which prevail in the area where that product is intended for use.

80 By contrast, as stated in points 82 and 83 of the Advocate General’s Opinion, that concept may not include purely hypothetical emissions. It follows in essence from Article 1 of Directive 2003/4, read in conjunction with Article 2(1) thereof, that the objective of that directive is to ensure access to information concerning factors, such as emissions affecting or likely to affect elements of the environment, in particular air, water and land. By definition, that does not include purely hypothetical emissions.

81 In the light of all of the above, ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as including, inter alia, the release into the environment of products or substances such as plant protection products or biocides and substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use.

– The concept of ‘information on emissions into the environment’

82 As regards the question whether the different categories of information referred to in paragraph 50 of the present judgment are covered by ‘information on emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4, it is necessary, in the first place, to ascertain whether, as the Netherlands Government submits, that concept covers only information on emissions from the plant protection product or biocide in question — or from substances that that product contains — as such, that is to say information concerning the nature, composition, quantity, date and place of those emissions, or if that concept also covers data relating to the effects of those emissions on the environment.

83 In that regard, it must be noted, as regards the wording of that provision, that there are differences between the language versions. Therefore while the French version of that provision refers to ‘informations relatives à des émissions dans l’environnement’ [information relating to emissions into the environment] a number of other language versions use the expression ‘information on emissions into the environment’. In particular the German language version refers to ‘Informationen über Emissionen in die Umwelt’, the Italian to ‘informazioni sulle emissioni nell’ambiente’ and the English to ‘information on emissions into the environment’.

84 According to settled case-law of the Court, the need for a uniform interpretation of a provision of EU law means that, where there is divergence between the various language versions of the provision, the latter must be interpreted by reference to the context and purpose of the rules of which it forms part (see, inter alia, judgment of 15 October 2015, *Grupo Itevelesa and Others*, C-168/14, EU:C:2015:685, paragraph 42 and the case-law cited).

85 As set out in paragraph 55 of the present judgment, the objective of Directive 2003/4 is to ensure a general principle of access to environmental information held by or for public authorities and to achieve the widest possible systematic availability and dissemination to the public of environmental information. As noted in recital 1 of that directive, such access and dissemination seek, inter alia, to contribute to a greater awareness of environmental matters and more effective participation by the public in environmental decision-making (see, inter alia, judgment of 28 July 2011, *Office of Communications*, C-71/10, EU:C:2011:525, paragraph 26).

86 For those purposes, the public must have access not only to information on emissions as such, but also to information concerning the medium to long-term consequences of those emissions on the state of the environment, such as the effects of those emissions on non-targeted organisms. The public interest in accessing information on emissions into the environment is specifically to know not only what is, or foreseeably will be, released into the environment, but also, as the Advocate General stated in point 86 of her Opinion, to understand the way in which the environment could be affected by the emissions in question.

87 It follows that ‘information on emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as covering not only information on emissions as such, namely information concerning the nature, composition, quantity, date and place of those emissions but also data concerning the medium to long-term consequences of those emissions on the environment.

88 That being noted, it should be established, in the second place, whether the fact that the data at issue come from studies performed entirely or in part in the field, laboratory studies or translocation studies — that is to say studies concerning the analysis of the migration of the product or substance in question into the plant —, affects its classification as ‘information on emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 and, in particular, whether data deriving from laboratory studies may be covered by that concept.

89 It is necessary, in reply to that question, to consider that that fact is not conclusive on its own. What matters is not so much that the data in question come from studies performed entirely or in part in the field or in laboratories or even from a translocation examination, but that the purpose of those studies is to assess ‘emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4 — that is to say, as stated in paragraphs 77 and 78 of the present judgment, the actual or foreseeable emissions of the product or substance in question into the environment under circumstances representing normal or realistic conditions of use of that product or substance —, or to analyse the effects of those emissions.

90 Therefore, data from tests whose objective is to study the effects of the use of a dose of the product or substance in question which is significantly above the maximum dose for which the marketing authorisation is granted and which is to be used in practice, or a dose in a much higher concentration, do not, in particular, constitute ‘information on emissions into the environment’, since that information relates to emissions which are not foreseeable under normal or realistic conditions of use.

91 By contrast, contrary to the Commission’s submission, ‘information on emissions into the environment’ covers studies which seek to establish the toxicity, effects and other aspects of a product or substance under the most unfavourable realistic conditions which could possibly occur, and studies carried out in conditions as close as possible to normal agricultural practice and conditions which prevail in the area where that product or substance is to be used.

92 As regards, in the third place, the question whether information relating to residues present in the environment after application of the product in question and studies on the measurement of the substance’s drift at the time of that application constitute ‘information on emissions into the environment’ within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4, it must be noted, first, that, in accordance with Article 2(2) of Directive 91/414, Article 2(1)(g) of Directive 98/8 and Article 3(1) of Regulation No 1107/2009, residues are substances present, in particular, in or on plants or elsewhere in the environment and resulting from the use of a plant

protection product or biocide, including metabolites of those substances, their breakdown or reaction products.

93 Accordingly, the presence of residues in the environment is caused by emissions into the environment from the product concerned or substances contained therein. It is therefore a consequence of those emissions. That is the case not only in respect of what remains of substances sprayed into the air or deposited by the product in question on plants, soil or non-targeted organisms, but also of metabolites of those substances and their breakdown or reaction products. Although metabolites derive from the transformation of substances contained in the product in question, they are a consequence of the emission from that product and those substances into the environment.

94 Moreover, it must be noted that drift is the airborne carrying by droplets or vapour of plant protection products or biocides outside the area targeted for treatment. Therefore, it is also a consequence of the emission from those products or substances into the environment.

95 It follows that the information on residues present in the environment following application of the product concerned and the studies on the measurement of that substance's drift at the time of that application are covered by 'information on emissions into the environment' within the meaning of the second subparagraph of Article 4(2) of Directive 2003/4.

96 In the light of all the above, it is necessary to consider that 'information on emissions into the environment' covers information concerning the nature, composition, quantity, date and place of the 'emissions into the environment' of plant protection products and biocides and substances contained therein, and data concerning the medium to long-term consequences of those emissions on the environment, in particular information relating to residues in the environment following application of the product in question, and studies on the measurement of the substance's drift during that application, whether those data come from studies performed entirely or in part in the field or from laboratory or translocation studies.

97 Moreover, it must be stressed that, contrary to what, in essence, Bayer and the German Government claim, such an interpretation of the second subparagraph of Article 4(2) of Directive 2003/4 does not disregard either Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter') as regards freedom to conduct a business and the right to property, or Article 39(3) of the TRIPS Agreement which ensures the confidentiality of undisclosed data submitted by an applicant for authorisation to place pharmaceutical or chemical products on the market. Nor does it deprive of its effectiveness Article 63 of Regulation No 1107/2009 which, in paragraph 2 thereof, lists data normally deemed to undermine, inter alia, the protection of commercial interests and in respect of such information, any person may, pursuant to paragraph 1 of that article, request that it is to be treated as confidential.

98 As regards, first, Articles 16 and 17 of the Charter and Article 39(3) of the TRIPS Agreement, it should be noted that, in accordance with Article 52(1) of the Charter, rights guaranteed under the Charter may be subject to certain limitations, as long as they are provided for by law, respect the essence of those rights and freedoms, are necessary and genuinely meet objectives of general interest recognised by the European Union. Furthermore, Article 39(3) of the TRIPS Agreement allows disclosure of data submitted by an applicant for authorisation to place a pharmaceutical or chemical product on the market where necessary to protect the public.

99 In the context of weighing the rights ensured by Articles 16 and 17 of the Charter and Article 39(3) of the TRIPS Agreement, on the one hand, against the objectives of environmental protection and of the widest possible disclosure of environmental information, on the other hand, the EU legislature, in accordance with its discretion, considered that it was necessary, to ensure that those objectives were met, to provide that a request for access concerning 'information on emissions into the environment' could not, in the light of the relevance and importance of that information in terms of environmental protection, be refused on the ground that its disclosure would adversely affect the confidentiality of commercial or industrial information.

100 In that regard, the interpretation of 'information on emissions into the environment' set out in paragraph 96 of the present judgment does not in any way mean that all data contained in dossiers for authorisation to place plant protection products or biocides on the market, in particular, all data from studies carried out in order to obtain that authorisation, are covered by that concept and must always be disclosed. Only data relating to 'emissions into the environment' are covered by that concept, which excludes, inter alia, not only information which does not concern emissions from the product in question into the environment, but also, as is apparent from paragraphs 77 to 80 of the present judgment, information which relates to hypothetical emissions, that is to say emissions which are not actual or foreseeable from the product or substance in question under representative circumstances of normal or realistic conditions of use. That interpretation does not therefore lead to disproportionate undermining of protection of the rights ensured by Articles 16 and 17 of the Charter and by Article 39(3) of the TRIPS Agreement.

101 As regards Article 63 of Regulation No 1107/2009, it should be noted that, as set out in paragraph 43 of the present judgment, that article applies without prejudice to Directive 2003/4. Accordingly, it does not in any way follow from that article that the information referred to therein could not be classified as 'information on emissions into the environment' or that that data could never be disclosed pursuant to that directive.

102 Furthermore, it must be pointed out that the interpretation of that concept set out in paragraph 96 of the present judgment does not deprive Article 63 of its effectiveness. The presumption established by paragraph 2 of that article allows the competent authority to consider that information submitted by an applicant for a marketing authorisation covered by that provision is in principle confidential and may not be made available to the public if no request for access to that information has been made on the basis of Directive

2003/4. That presumption also guarantees the applicant, in the event that such a request is made, that the competent authority may disclose that information only after establishing, on an individual basis, whether that information relates to emissions into the environment or whether another overriding public interest justifies that disclosure.

– Conclusion

103 In the light of the foregoing considerations, the answer to the third to seventh and ninth questions is that the second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as follows:

– 'emissions into the environment' within the meaning of that provision covers the release into the environment of products or substances such as plant protection products or biocides and substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use;

– 'information on emissions into the environment' within the meaning of that provision covers information concerning the nature, composition, quantity, date and place of the 'emissions into the environment' of those products or substances, and data concerning the medium to long-term consequences of those emissions on the environment, in particular information relating to residues in the environment following application of the product in question and studies on the measurement of the substance's drift during that application, whether the data come from studies performed entirely or in part in the field, or from laboratory or translocation studies.

The eighth question

104 By its eighth question, the referring court asks, in essence, whether the second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as meaning, in the event of a request for access to information on emissions into the environment, that the source of that information must be disclosed in its entirety or to the extent of relevant data which may be extracted.

105 It follows from that provision that the grounds referred to in points (a), (d) and (f) to (h) of the first subparagraph of Article 4(2) of Directive 2003/4 may not be invoked in respect of a request for access to environmental information, in so far as that request concerns information on emissions into the environment. Under those circumstances, when the disclosure of the information requested would adversely affect one of the interests referred to in that provision, only the relevant data which may be extracted from the source of information concerning emissions into the environment must be disclosed, where it is possible to separate those data from the other information contained in that source, which is for the referring court to assess.

106 In the light of the above considerations, the answer to the eighth question is that the second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as meaning, in the event of a request for access to information on emissions into the environment

whose disclosure would adversely affect one of the interests referred to in points (a), (d) and (f) to (h) of the first subparagraph of Article 4(2) of that directive, that only relevant data which may be extracted from the source of information concerning emissions into the environment must be disclosed where it is possible to separate those data from the other information contained in that source, which is for the referring court to assess.

Costs

107 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 (Fifth Chamber) hereby rules:

1. **Article 4(2) 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 fact that the applicant for authorisation to place a plant protection product or biocide on the market, did not, during the procedure for obtaining that authorisation, request that information submitted under that procedure be treated as confidential on the basis of Article 14 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, Article 19 of Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market or Article 33(4) and Article 63 of Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC does not preclude the competent authority, which has received, following the closure of that procedure, a request for access to the information submitted on the basis of Directive 2003/4 by a third party, from examining the applicant's objection to that request for access and refusing it, if necessary, pursuant to point (d) of the first subparagraph of Article 4(2) of that directive on the ground that the disclosure of that information would adversely affect the confidentiality of commercial or industrial information.**

2. **The second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as follows:**

– **'emissions into the environment' within the meaning of that provision covers the release into the environment of products or substances such as plant protection products or biocides and substances contained in those products, to the extent that that release is actual or foreseeable under normal or realistic conditions of use;**

– **'information on emissions into the environment' within the meaning of that provision covers information concerning the nature, composition, quantity, date and**

place of the 'emissions into the environment' of those products or substances, and data concerning the medium to long-term consequences of those emissions on the environment, in particular information relating to residues in the environment following application of the product in question and studies on the measurement of the substance's drift during that application, whether the data comes from studies performed entirely or in part in the field, or from laboratory or translocation studies.

3. **The second subparagraph of Article 4(2) of Directive 2003/4 must be interpreted as meaning, in the event of a request for access to information on emissions into the environment whose disclosure would adversely affect one of the interests referred to in points (a), (d), and (f) to (h) of the first subparagraph of Article 4(2) of that directive, that only relevant data which may be extracted from the source of information concerning emissions into the environment must be disclosed where it is possible to separate those data from the other information contained in that source, which is for the referring court to assess.**

[Signatures]

1* Language of the case: Dutch.