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Case Summary posted by the Task Force on Access to Justice

T-264/04, WWF-EPP v. Council of the European Union

1. Key issue	Definition of environmental information (art. 2.3) - The Court of First Instance accepted that the European Council refused to grant WWF access to preliminary papers on the Cancun negotiations on the grounds that it would seriously undermine the EU's commercial interests as well as its economic relations with third countries
2. Country/Region	European
3. Court/body	Court of First Instance (CFI)
4. Date of judgment /decision	25 th April 2007
5. Internal reference	Court of First Instance, T-264/04
6. Articles of the Aarhus Convention	Article 2(3)
7. Key words	Access to information, European Community institutions, access to documents, transparency

8. Case summary

On 23rd February 2004, WWF-European Policy Office (EPO) applied to the Council, under Article 6 of Regulation EC No. 1049/2001 ('the Transparency Regulation') in order to obtain access to documents on the topic of 'WTO - Sustainability and Trade after Cancun', concerning a meeting of the so-called 'Article 133 Committee'. The documents sought were preliminary papers prepared by the Commission including, *inter alia*, reports on the state of the Cancun negotiations and on the outcome of the current EU approach in the negotiations and the Minutes or resolutions/recommendations arising from that meeting. In its application, WWF referred to the proposal which became EC Regulation No. 1367/2006 on the application of the Aarhus Convention to the EC's institutions and bodies ('The Aarhus Regulation') to support one of its claims.

The Aarhus Regulation grants the public a right of access to environmental information coupled with a progressive dissemination of such information. So, differently from the Transparency Regulation it applies only to the environment. Moreover, it foresees a right of access to information instead of a right of access to documents. WWF's case therefore raised the issue of whether, in practice, there is a difference between the 'old regime' of access to environmental documents and the new Aarhus regime of access to environmental information.

The Council consulted the Commission under Article 4(4) of the Transparency Regulation but then refused to grant access to the documents on the grounds that it would seriously undermine the EU's commercial interests as well as its economic relations with third countries (Article 4(1)(a), 3rd and 4th indents of the Transparency Regulation respectively). The Council invoked the same grounds to refuse partial access.

The second part of the application – referring to the minutes of the meeting – was also refused since the Council contended that there were no minutes or similar documents. Furthermore, the Council stated that it was not obliged to produce minutes or release information that was not part of an existing document.

On 30th June 2004, WWF applied to the Court of First Instance, requesting it to annul the contested decision. An oral hearing was held on 8th November 2006. On 25th April 2007, the CFI dismissed WWF's application on the basis that: (1) the Council had given sufficient reasons under Article 7(1) of the Transparency Regulation to refuse WWF's request and that it did not err in its assessment that the first part of the request for access related to sensitive information, the release of which – under the exceptions in Article 4(1)(a), 3rd and 4th indent of the Transparency Regulation – could undermine the public interest; (2) it accepted that the Council had correctly applied Article 4(6) of the Transparency Regulation by not granting partial access to the documents relating to the first part of the request of access for the abovementioned reasons; and (3) the right of access to documents under Article 2 of the Transparency Regulation had not been violated by the Council's refusal to produce (inexistent) minutes or any other related documents.

As such, the CFI ruled that the '*concept of document must be distinguished from that of information*'. Thus, the Community institutions are only obliged to disclose information held in the form of a formal document, as opposed to " ... *any information in written, visual, aural or electronic or any other material form*" as defined in Article 2(3) of the Aarhus Convention (and Article 2(d) of the Aarhus Regulation).

9. Link
addresses

<http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=T-264/04&td=ALL>

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