

## JUDGMENT OF THE COURT (Fifth Chamber)

6 October 2015 (\*)

(Reference for a preliminary ruling — Aarhus Convention — Directive 2003/4/EC — Articles 5 and 6 — Public access to environmental information — Charge for supplying environmental information — Reasonable amount — Costs of maintaining a database and overheads — Access to justice — Administrative and judicial review of a decision imposing a charge)

In Case C-71/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the First-tier Tribunal (General Regulatory Chamber, Information Rights) (United Kingdom), made by decision of 4 February 2014, received at the Court on 10 February 2014, in the proceedings

**East Sussex County Council**

v

**Information Commissioner,**

other parties:

**Property Search Group,**

**Local Government Association,**

THE COURT (Fifth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, C. Vajda, A. Rosas, E. Juhász and D. Šváby, Judges,

Advocate General: E. Sharpston,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2014,

after considering the observations submitted on behalf of:

- East Sussex County Council, by R. Cobb and C. Brannigan, Solicitors, and N. Pleming QC,
- the Information Commissioner, by R. Bailey, Solicitor, and A. Proops, Barrister,
- Property Search Group, by N. Clayton,
- the Local Government Association, by R. Cobb, Solicitor,
- the United Kingdom Government, by L. Christie, acting as Agent, and J. Maurici and S. Blackmore, Barristers,

- the Danish Government, by C. Thorning and M. Wolff, acting as Agents,
- the European Commission, by L. Pignataro-Nolin, L. Armati and J. Norris-Usher, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 April 2015,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation of Articles 5 and 6 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 East Sussex County Council ('the County Council') and the Information Commissioner concerning the Commissioner's decision notice declaring unlawful a charge imposed by the County Council for supplying environmental information to PSG Eastbourne, a property search company.

### **Legal context**

#### *International law*

- 3 The Convention on access to information, public participation in decision-making and access to justice in environmental matters ('the Aarhus Convention') was 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).
- 4 Article 4 of the Aarhus Convention, 'Access to environmental information', provides in paragraph 1 that, subject to certain reservations and conditions, each party to the Convention is to ensure that public authorities, in response to a request for environmental information, make such information available to the public, within the framework of national legislation.
- 5 Article 4(8) of the Aarhus Convention provides:  
  
'Each Party may allow its public authorities to make a charge for supplying information, but such charge shall not exceed a reasonable amount. Public authorities intending to make such a charge for supplying information shall make available to applicants a schedule of charges which may be levied, indicating the circumstances in which they may be levied or waived and when the supply of information is conditional on the advance payment of such a charge.'
- 6 Article 9 of the Aarhus Convention, 'Access to justice', provides in paragraph 1:  
  
'Each Party shall, within the framework of its national legislation, ensure that any person who considers that his or her request for information under Article 4 has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with in accordance with the provisions of that article, has access to a review procedure before a court of law or another independent and impartial body established by law.'

In the circumstances where a Party provides for such a review by a court of law, it shall ensure that such a person also has access to an expeditious procedure established by law that is free of charge or inexpensive for reconsideration by a public authority or review by an independent and impartial body other than a court of law.

...’

*EU law*

Directive 90/313/EEC

- 7 Under Article 5 of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment (OJ 1990 L 158, p. 56):

‘Member States may make a charge for supplying the information, but such charge may not exceed a reasonable cost.’

Directive 2003/4

- 8 Recitals 2 and 18 in the preamble to Directive 2003/4 state:

‘(2) ... This Directive expands the existing access granted under Directive 90/313/EEC.

...

(18) Public authorities should be able to make a charge for supplying environmental information but such a charge should be reasonable. This implies that, as a general rule, charges may not exceed actual costs of producing the material in question. ...’

- 9 Article 1(a) of that directive provides:

‘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; ...’

- 10 Article 3(1) of the directive provides:

‘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 Article 3(5) of the directive provides:

‘For the purposes of this Article, Member States shall ensure that:

...

- (c) the practical arrangements are defined for ensuring that the right of access to environmental information can be effectively exercised, such as:

- the designation of information officers;

- the establishment and maintenance of facilities for the examination of the information required,
- registers or lists of the environmental information held by public authorities or information points, with clear indications of where such information can be found.

...’

12 Article 5 of the directive, ‘Charges’, provides in paragraphs 1 and 2:

‘1. Access to any public registers or lists established and maintained as mentioned in Article 3(5) and examination *in situ* of the information requested shall be free of charge.

2. Public authorities may make a charge for supplying any environmental information but such charge shall not exceed a reasonable amount.’

13 Article 6 of the directive, ‘Access to justice’, provides in paragraphs 1 and 2:

‘1. Member States shall ensure that any applicant who considers that his request for information has been ignored, wrongfully refused (whether in full or in part), inadequately answered or otherwise not dealt with in accordance with the provisions of Articles 3, 4 or 5, has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or another public authority or reviewed administratively by an independent and impartial body established by law. Any such procedure shall be expeditious and either free of charge or inexpensive.

2. In addition to the review procedure referred to in paragraph 1, Member States shall ensure that an applicant has access to a review procedure before a court of law or another independent and impartial body established by law, in which the acts or omissions of the public authority concerned can be reviewed and whose decisions may become final. Member States may furthermore provide that third parties incriminated by the disclosure of information may also have access to legal recourse.’

#### *United Kingdom law*

14 The Environmental Information Regulations 2004 (‘the EIR 2004’) are intended to transpose Directive 2003/4 into national law.

15 Regulation 8(1) to (3) of the EIR 2004 provides:

‘(1) Subject to paragraphs (2) to (8), where a public authority makes environmental information available ... the authority may charge the applicant for making the information available.

(2) A public authority shall not make any charge for allowing an applicant—

- (a) to access any public registers or lists of environmental information held by the public authority; or
- (b) to examine the information requested at the place which the public authority makes available for that examination.

(3) A charge under paragraph (1) shall not exceed an amount which the public authority is satisfied is a reasonable amount.’

- 16 Under section 50(1) of the Freedom of Information Act 2000, as applied by regulation 18 of the EIR 2004, any person concerned may apply to the Information Commissioner for a decision whether the public authority in question has dealt with his request for information in accordance with the requirements of the EIR 2004.

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

- 17 In connection with a real property transaction, PSG Eastbourne, a property search company, requested environmental information from the County Council, in order to supply the information received for commercial purposes to persons involved in the transaction. The County Council, which frequently receives such requests, known as ‘property searches’, supplied the information requested and imposed several charges amounting to a total of GBP 17 (approximately EUR 23), applying a standard scale of charges. As appears from Annex C to the order for reference, those charges ranged from GBP 1 to GBP 4.50 each (approximately EUR 1 to EUR 6).
- 18 Much of the data used for replying to property searches is processed and organised by an ‘information team’ of the County Council in a database containing data in electronic or paper form. The database is also used by other County Council departments for carrying out various tasks.
- 19 The scale of charges used by the County Council allocates to each type of information requested a standard cost which is applied uniformly regardless of the maker of the request. Those costs were calculated by the County Council on the basis of an hourly rate, taking into account the time spent by the whole of the information team on maintaining the database and replying to individual requests for information. In accordance with the County Council’s practice, the charges levied in the present case were intended to cover the entire costs incurred by the council in performing those two activities, without making any profit. The hourly rate used to determine the amount of the charges included not only salary costs but also a share of overheads. According to the referring tribunal, the inclusion of overheads in the calculation of the charges corresponds to normal accounting principles.
- 20 Following a complaint by PSG Eastbourne against the charges made by the County Council, the Information Commissioner issued a decision notice finding that the charges were not in accordance with regulation 8(3) of the EIR 2004, in that they included costs other than postage or photocopying costs or other disbursements associated with supplying the information requested.
- 21 The County Council, supported by the Local Government Association, appealed to the referring tribunal against that decision notice, arguing that the charges set out in the scale were lawful and did not exceed a reasonable amount. The Information Commissioner, supported by the Property Search Group, claimed, on the other hand, that Article 5(2) of Directive 2003/4 prevented the costs of maintaining a database or overheads from being taken into account in the calculation of those charges. However, in the light of the legislative history of Directive 2003/4, the Information Commissioner conceded that the charges that could be imposed under that article were not confined to disbursements but could also include costs attributable to staff time spent on dealing with individual requests for information.
- 22 The referring tribunal, while sharing that view, considers that the charges in the scale used by the County Council are unlikely to deter anyone from requesting environmental

information in the specific context of property searches, bearing in mind the value of the transactions concerned.

- 23 The tribunal considers, moreover, that the County Council's calculation of the charges is incorrect in so far as it includes the full annual staff costs of maintaining the council's database, even though some parts of the database are also maintained for purposes other than answering individual requests for information. It therefore takes the view that a proportion at most of the costs associated with maintaining the database should have been included in the calculation of the charges.
- 24 The referring tribunal nevertheless asks whether a proportion of the costs associated with maintaining the County Council's database and the overheads attributable to the staff time spent on maintaining the database and replying to individual requests for information may be included in the calculation of the charges in accordance with Article 5(2) of Directive 2003/4.
- 25 The tribunal further raises the question of the necessary extent of the administrative and judicial review provided for in Article 6(1) and (2) of Directive 2003/4 as regards the reasonable amount of a charge, while considering that the practical effect of that question on the outcome of the main proceedings is uncertain. The tribunal observes that the wording of regulation 8(3) of the EIR 2004, interpreted in accordance with the principles of English administrative law, limits the extent of review of the authority's decision to whether the decision itself was unreasonable, that is, irrational, illegal or unfair, with very limited scope for reviewing the relevant factual conclusions reached by the authority.
- 26 In those circumstances, the First-tier Tribunal (General Regulatory Chamber, Information Rights) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- (1) What is the meaning to be attributed to Article 5(2) of Directive 2003/4 and in particular can a charge of a reasonable amount for supplying a particular type of environmental information include:
    - (a) part of the cost of maintaining a database used by the public authority to answer requests for information of that type;
    - (b) overhead costs attributable to staff time properly taken into account in fixing the charge?
  - (2) Is it consistent with Articles 5(2) and 6 of Directive 2003/4 for a Member State to provide in its regulations that a public authority may charge an amount for supplying environmental information which does '... not exceed an amount which the public authority is satisfied is a reasonable amount' if the decision of the public authority as to what is a 'reasonable amount' is subject to administrative and judicial review as provided under English law?

### **Consideration of the questions referred**

#### *Question 1*

- 27 By its first question, the referring tribunal seeks essentially to know whether Article 5(2) of Directive 2003/4 must be interpreted as meaning that the charge for supplying a particular type of environmental information may include part of the cost of maintaining a database,

such as that at issue in the main proceedings, used for that purpose by the public authority, and the overheads attributable to the time spent by the staff of the public authority on, first, keeping the database and, secondly, answering individual requests for information, properly taken into account in fixing the charge.

- 28 In accordance with Article 5(2) of Directive 2003/4, public authorities may make a charge for supplying any environmental information, but the charge must not exceed a reasonable amount.
- 29 As the Advocate General observes in points 44 and 46 of her Opinion, that provision makes the imposition of a charge subject to two conditions. First, all the factors on the basis of which the amount of the charge is calculated must relate to ‘supplying’ the environmental information requested. Secondly, if the first condition is satisfied, the total amount of the charge must not exceed a ‘reasonable amount’.
- 30 In the first place, it must therefore be examined whether the costs of maintaining a database such as that at issue in the main proceedings, used for the purpose of supplying environmental information, and the overheads attributable to the time spent by the staff of the public authority in question on, first, maintaining that database and, secondly, answering individual requests for information, are factors relating to ‘supplying’ environmental information.
- 31 To determine what constitutes ‘supplying’ environmental information within the meaning of Article 5(2) of Directive 2003/4, the connection between that provision and Article 5(1) of the directive must be taken into account.
- 32 Directive 2003/4 distinguishes between ‘supplying’ environmental information, for which the public authorities may make a charge pursuant to Article 5(2) of the directive, on the one hand, and ‘access’ to public registers or lists established and maintained as mentioned in Article 3(5) of the directive and ‘examination *in situ*’ of the information requested, which are to be free of charge in accordance with Article 5(1) of the directive, on the other hand.
- 33 Article 5(1) of Directive 2003/4 refers to Article 3(5) of the directive. In accordance with Article 3(5)(c), Member States are to ensure that the practical arrangements are defined for ensuring that the right of access to information laid down in that article can be effectively exercised. In particular, ‘the establishment and maintenance of facilities for the examination of the information required’ and ‘registers or lists of the environmental information held by public authorities or information points, with clear indications of where such information can be found’ are mentioned for that purpose.
- 34 It thus follows from Article 5(1) in conjunction with Article 3(5)(c) of Directive 2003/4 that the Member States are obliged not only to establish and maintain registers and lists of environmental information held by public authorities or information points, and facilities for the examination of that information, but also to provide access to those registers, lists and facilities for examination free of charge.
- 35 The fact that access to those registers, lists and facilities for examination, provided for in Article 5(1) of Directive 2003/4, is free of charge must serve to delimit the concept of ‘supplying’ environmental information within the meaning of Article 5(2) of the directive, which may be subject to a charge.
- 36 It follows that, in principle, it is only the costs that do not arise from the establishment and maintenance of those registers, lists and facilities for examination that are attributable to the

‘supplying’ of environmental information and are costs for which the national authorities are entitled to charge under Article 5(2) of Directive 2003/4.

- 37 Consequently, the costs of maintaining a database used by the public authority for answering requests for environmental information may not be taken into consideration when calculating a charge for ‘supplying’ environmental information.
- 38 Such costs, in the light of the link between Article 5(1) and Article 5(2) of Directive 2003/4 referred to in paragraphs 31 to 35 above, are associated with establishing and maintaining registers, lists and facilities for examination, the costs of which are not recoverable in accordance with Article 5(1) in conjunction with Article 3(5)(c) of Directive 2003/4. It would be contradictory if the public authorities could pass such costs on to persons who make requests for information on the basis of Article 5(2) of Directive 2003/4, while examination *in situ* of the information in the database is free of charge in accordance with Article 5(1) of the directive.
- 39 By contrast, the costs of ‘supplying’ environmental information which may be charged under Article 5(2) of Directive 2003/4 encompass not only postal and photocopying costs but also the costs attributable to the time spent by the staff of the public authority concerned on answering an individual request for information, which includes the time spent on searching for the information and putting it in the form required. Such costs do not arise from the establishment and maintenance of registers and lists of environmental information held and facilities for the examination of that information. That conclusion is, moreover, supported by recital 18 in the preamble to the directive, which states that in principle charges may not exceed the ‘actual costs’ of producing the material in question.
- 40 In view of the use of the expression ‘actual costs’ in that recital, it must be concluded that overheads, properly taken into account, may in principle be included in the calculation of the charge provided for in Article 5(2) of Directive 2003/4. As the referring tribunal points out, the inclusion of overheads in the calculation of that charge corresponds to normal accounting principles. However, those costs can be included in the calculation of that charge only to the extent that they are attributable to a cost factor falling within the ‘supplying’ of environmental information.
- 41 As the time spent by the staff of the public authority concerned on answering individual requests for information falls within the ‘supplying’ of environmental information, as found in paragraph 39 above, the proportion of overheads attributable to that time may also be included in the calculation of the charge provided for in Article 5(2) of Directive 2003/4. That is not the case, on the other hand, with the proportion of overheads attributable to the staff time spent on the establishment and maintenance of a database used by the public authority to answer requests for information.
- 42 In the second place, as regards the second condition laid down in Article 5(2) of Directive 2003/4, namely that the total amount of the charge provided for in that provision must not exceed a reasonable amount, it follows from the Court’s case-law on Article 5 of Directive 90/313, which remains of relevance for the application of Article 5(2) of Directive 2003/4, that any interpretation of the expression ‘reasonable amount’ that may have a deterrent effect on persons wishing to obtain information or that may restrict their right of access to information must be rejected (see, to that effect, judgment in *Commission v Germany*, C-217/97, EU:C:1999:395, paragraph 47).
- 43 In order to assess whether a charge made under Article 5(2) of Directive 2003/4 has a deterrent effect, account must be taken both of the economic situation of the person requesting the information and of the public interest in protection of the environment. That

assessment cannot therefore relate solely to the person's economic situation, but must also be based on an objective analysis of the amount of the charge. To that extent, the charge must not exceed the financial capacity of the person concerned, nor in any event appear objectively unreasonable.

- 44 In so far as the referring tribunal considers that, in view of the value of the transactions concerned, the charges made by the County Council do not appear to be deterrent in the specific context of property searches, it must therefore be stated that the mere fact that those charges are not deterrent in relation to the economic situation of the persons involved in real property transactions does not release the public authority from its obligation also to ensure that the charges do not appear unreasonable to the public, having regard to the public interest in protection of the environment. However, subject to verification by the referring tribunal, it does not appear that charges such as those at issue in the main proceedings, mentioned in paragraph 17 above, which must moreover be reduced in order to exclude the costs associated with the establishment and maintenance of the database, exceed what is reasonable.
- 45 In the light of all the above considerations, the answer to Question 1 is that Article 5(2) of Directive 2003/4 must be interpreted as meaning that the charge for supplying a particular type of environmental information may not include any part of the cost of maintaining a database, such as that at issue in the main proceedings, used for that purpose by the public authority, but may include the overheads attributable to the time spent by the staff of the public authority on answering individual requests for information, properly taken into account in fixing the charge, provided that the total amount of the charge does not exceed a reasonable amount.

#### *Question 2*

- 46 By its second question, the referring tribunal asks essentially whether Article 6 of Directive 2003/4 must be interpreted as precluding national legislation under which the reasonableness of a charge for supplying a particular type of environmental information is the subject only of limited administrative and judicial review as provided for in English law.

#### *Admissibility*

- 47 The European Commission and the United Kingdom Government raise doubts as to the admissibility of the second question, as the referring tribunal considers that the practical effect of this question on the outcome of the main proceedings is uncertain.
- 48 On this point, it must be recalled that it is settled case-law that the procedure established by Article 267 TFEU is an instrument of cooperation between the Court of Justice and the national courts, in which questions on the interpretation of EU law referred by a national court, in the factual and legislative context which that court is responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the facts or object of the main proceedings, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, to that effect, judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraphs 29 and 30).
- 49 The mere uncertainty of the referring tribunal as to whether the question of the extent of administrative and judicial review of the reasonableness of the charge for supplying environmental information will have a practical effect on the outcome of the main

proceedings cannot be a sufficient ground to conclude that it is obvious that the interpretation of EU law sought by the second question bears no relation to the object of the main proceedings or that the problem is hypothetical. The question is therefore admissible.

#### Substance

- 50 Article 6(1) of Directive 2003/4 provides essentially that the Member States are to ensure that any person requesting information has access to a procedure in which the acts or omissions of the public authority concerned can be reconsidered by that or another public authority or reviewed administratively by an independent and impartial body established by law.
- 51 Article 6(2) of that directive provides essentially that the Member States are to ensure that any person requesting information has access to a review procedure before a court of law or another independent and impartial body established by law, in which the acts or omissions of the public authority concerned can be reviewed and whose decisions may become final.
- 52 According to settled case-law, where, in the absence of EU rules governing the matter, it is for the legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, those detailed rules must not be less favourable than those governing similar domestic actions (principle of equivalence) and must not make it impossible in practice or excessively difficult to exercise rights conferred by EU law (principle of effectiveness) (judgment in *Gruber*, C-570/13, EU:C:2015:231, paragraph 37 and the case-law cited). As far as the latter principle is concerned, it should also be recalled that Article 47 of the Charter of Fundamental Rights of the European Union enshrines the right to an effective remedy before an impartial tribunal (see, to that effect, judgment in *Unibet*, C-432/05, EU:C:2007:163, paragraph 37 and the case-law cited).
- 53 In Directive 2003/4, the expressions ‘be reconsidered’ and ‘reviewed administratively’ in Article 6(1) and ‘be reviewed’ in Article 6(2) do not determine the extent of the administrative and judicial review required by the directive. In the absence of further detail in EU law, it is for the legal systems of the Member States to determine that extent, subject to observance of the principles of equivalence and effectiveness.
- 54 As regards the principle of equivalence, it must be noted that there is nothing in the documents submitted to the Court from which it may be concluded that the detailed procedural rules governing actions brought under English law for safeguarding rights which individuals derive from EU law are less favourable than those governing similar actions for safeguarding rights of individuals based on domestic provisions.
- 55 As regards the principle of effectiveness, in the present case that principle requires that protection of the rights which persons making requests for information derive from Directive 2003/4 is not subject to conditions that may make it impossible in practice or excessively difficult to exercise those rights.
- 56 It should be recalled in this connection that the EU legislature, in adopting Directive 2003/4, intended to ensure the compatibility of EU law with the Aarhus Convention 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 (judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 36 and the case-law cited). The existence of effective administrative and judicial review of the making of a charge for supplying such information is intrinsically linked to the realisation of that objective. Furthermore, that review must

necessarily relate to whether the public authority has complied with the two conditions in Article 5(2) of that directive, identified in paragraph 29 above.

- 57 In the present case, the referring tribunal observes that the wording of regulation 8(3) of the EIR 2004, interpreted in accordance with the principles of English administrative law, limits the extent of administrative and judicial review to the question whether the decision taken by the public authority concerned was irrational, illegal or unfair, with very limited scope for reviewing the relevant factual conclusions reached by that authority.
- 58 In this respect, the Court has held that the exercise of the rights conferred by EU law is not made impossible in practice or excessively difficult merely by the fact that a procedure for the judicial review of decisions of the administrative authorities does not allow complete review of those decisions. However, also according to that case-law, any national judicial review procedure must none the less enable the court or tribunal hearing an application for annulment of such a decision to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of the decision (see, to that effect, judgments in *Upjohn*, C-120/97, EU:C:1999:14, paragraphs 30, 35 and 36, and *HLH Warenvertrieb and Orthica*, C-211/03, C-299/03 and C-316/03 to C-318/03, EU:C:2005:370, paragraphs 75 to 77). Judicial review that is limited as regards the assessment of certain questions of fact is thus compatible with EU law, on condition that it enables the court or tribunal hearing an application for annulment of such a decision to apply effectively the relevant principles and rules of EU law when reviewing the lawfulness of the decision (see, to that effect, judgment in *HLH Warenvertrieb and Orthica*, C-211/03, C-299/03 and C-316/03 to C-318/03, EU:C:2005:370, paragraph 79).
- 59 In any event, it must be pointed out that both the question whether a cost factor concerns the ‘supplying’ of the information requested and can thus be taken into consideration as such in the calculation of a charge imposed and the question whether the total amount of the charge is reasonable are questions of EU law. They must be amenable to administrative and judicial review carried out on the basis of objective elements and capable of ensuring full compliance with the conditions in Article 5(2) of Directive 2003/4.
- 60 It is for the referring tribunal to ascertain whether the above requirements are satisfied in the main proceedings and, if necessary, to interpret national law in accordance with those requirements.
- 61 In the light of the above observations, the answer to Question 2 is that Article 6 of Directive 2003/4 must be interpreted as not precluding national legislation under which the reasonableness of a charge for supplying a particular type of environmental information is the subject only of limited administrative and judicial review as provided for in English law, provided that the review is carried out on the basis of objective elements and, in accordance with the principles of equivalence and effectiveness, relates to the question whether the public authority making the charge has complied with the conditions in Article 5(2) of that directive, which is for the referring tribunal to ascertain.

### **Costs**

- 62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring tribunal, the decision on costs is a matter for that tribunal. 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 5(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 charge for supplying a particular type of environmental information may not include any part of the cost of maintaining a database, such as that at issue in the main proceedings, used for that purpose by the public authority, but may include the overheads attributable to the time spent by the staff of the public authority on answering individual requests for information, properly taken into account in fixing the charge, provided that the total amount of the charge does not exceed a reasonable amount.**
2. **Article 6 of Directive 2003/4 must be interpreted as not precluding national legislation under which the reasonableness of a charge for supplying a particular type of environmental information is the subject only of limited administrative and judicial review as provided for in English law, provided that the review is carried out on the basis of objective elements and, in accordance with the principles of equivalence and effectiveness, relates to the question whether the public authority making the charge has complied with the conditions in Article 5 (2) of that directive, which is for the referring tribunal to ascertain.**

[Signatures]

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\* Language of the case: English.