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OPINION OF ADVOCATE GENERAL
SHARPSTON
delivered on 16 April 2015 [1]

Case C-71/14

East Sussex County Council
v
Information Commissioner
Property Search Group
Local Government Association

(Request for a preliminary ruling from the First-tier Tribunal (Information Rights) (United Kingdom))

(Environment — Aarhus Convention — Directive 2003/4/EC — Access to information — Charge of a reasonable amount for supplying environmental information — Access to justice — Judicial review)

[1] – Original language: English.

1. Article 5(1) of Directive 2003/4, [2] lays down the principle that access to any public registers or lists of environmental information and examination in situ of such information shall be free of charge. Article 5(2) nevertheless permits public authorities to charge for *supplying* environmental information upon request, provided that the charge does not exceed a *reasonable amount*. Article 6 requires Member States to provide for administrative and judicial review of public authorities' decisions relating to access to environmental information.

2. Articles 5(2) and 6 reflect, respectively, Articles 4(8) and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters ('the Aarhus Convention'), [3] to which the European Community (and thus now the European Union) and all the Member States are parties.

3. The main proceedings before the First-tier Tribunal (Information Rights) (United Kingdom) ('the referring court') concern a property search company's [4] challenge to a decision of East Sussex County Council to charge it for the supply of information relevant to a property purchase (including information on any environmental matters which might affect that property's value). It sought that information on behalf of prospective purchasers and for profit. Questions have arisen as to (i) whether, pursuant to Article 5(2), a public authority may recover part of the cost of maintaining a database which it uses for responding to requests for particular types of environmental information and the overhead costs attributable to staff time, and (ii) whether Articles 5(2) and 6 preclude a national rule according to which 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 national law.

Aarhus Convention

4. Article 1 of the Aarhus Convention requires each Party to '… guarantee the rights of access to information, public participation in decision-making, and

2 – 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).

3 – Done at Aarhus, Denmark, on 25 June 1998, 2161 UNTS 447. See Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1). See points 4 to 8 below.

4 – The referring court refers to 'personal search company' to describe this type of company because this term was used in a government consultation paper (though other terms were also used in papers seen by the referring court); in some of the written observations lodged with the Court, 'property search company' was used instead for this purpose. I prefer to use the latter term in this Opinion.

access to justice in environmental matters in accordance with the provisions of [the Aarhus Convention]'. The objective of these obligations is '… to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being …'.

5. Article 2(3) explains that 'environmental information' can be 'in written, visual, aural, electronic or any other material form' and consists of (a) the state of elements of the environment; (b) factors and activities or measures affecting or likely to affect the elements of the environment (within the scope of (a)) and economic analyses and assumptions used in environmental decision-making; and (c) the state of human health and safety, conditions of human life, cultural sites and built structures inasmuch as they are or may be affected by the state of the elements of the environment or, through these elements, by the factors, activities or measures referred to in (b).

6. Article 4 ('Access to Environmental Information') provides:

'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, including, where requested and subject to subparagraph (b) below, copies of the actual documentation containing or comprising such information:

(a) Without an interest having to be stated;

(b) In the form requested unless:

(i) It is reasonable for the public authority to make it available in another form, in which case reasons shall be given for making it available in that form; or

(ii) The information is already publicly available in another form.

…

5. Where a public authority does not hold the environmental information requested, this public authority shall, as promptly as possible, inform the applicant of the public authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.

…

8. 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.' [5]

7. Article 5 ('Collection and dissemination of environmental information') states:

'1. Each Party shall ensure that:

(a) Public authorities possess and update environmental information which is relevant to their functions;

…

2. Each Party shall ensure that, within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible, inter alia, by:

(a) Providing sufficient information to the public about the type and scope of environmental information held by the relevant public authorities, the basic terms and conditions under which such information is made available and accessible, and the process by which it can be obtained;

(b) Establishing and maintaining practical arrangements, such as:

(i) Publicly accessible lists, registers or files;

(ii) Requiring officials to support the public in seeking access to information under this Convention; and

(iii) The identification of points of contact; and

(c) Providing access to the environmental information contained in lists, registers or files as referred to in subparagraph (b)(i) above free of charge.

3. Each Party shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public

[5] – The Protocol on Pollutant Release and Transfer Rights, which was adopted by the Parties to the Aarhus Convention on 21 May 2003 (but is open also to non-parties), provides for public access to information contained in its pollutant release and transfer register. Pursuant to Article 11(3) of that Protocol, Parties must ensure that access to information contained in their registers is free of charge, subject to Article 11(4) which provides that '[e]ach Party may allow its competent authority to make a charge for reproducing and mailing …, but such charge shall not exceed a reasonable amount'. See Doc. MP.PP/2003/1 which contains the text of the Protocol. The European Community (and thus now the European Union) and almost all Member States are parties to that Protocol. See Council Decision 2006/61/EC of 2 December 2005 on the conclusion, on behalf of the European Community, of the UN-ECE Protocol on Pollutant Release and Transfer Registers (OJ 2006 L 32, pp. 54 and 55).

through public telecommunications networks. Information accessible in this form should include:

(a) Reports on the state of the environment, as referred to in paragraph 4 below; [6]

(b) Texts of legislation on or relating to the environment;

(c) As appropriate, policies, plans and programmes on or relating to the environment, and environmental agreements; and

(d) Other information, to the extent that the availability of such information in this form would facilitate the application of national law implementing this Convention, provided that such information is already available in electronic form.

…'

8. According to Article 9 ('Access to justice'):

'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.

…

2. Each Party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

6 – Paragraph 4 states the obligation to publish and disseminate, at regular intervals, a national report on the state of the environment.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. …

…'

Directive 2003/4

9. According to recital 1 in the preamble to Directive 2003/4, 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'.

10. Recital 2 makes it clear that Directive 2003/4 expands existing access granted under Directive 90/313. [7]

11. Recital 5 states that EC law (and thus now EU law) must be consistent with the Aarhus Convention with a view to its conclusion by the European Community, as it then was.

12. Recital 18 concerns charges for the supply of information:

'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. Instances where advance payment will be required should be limited. In particular cases, where public authorities make available environmental information on a commercial basis, and where this is necessary in order to guarantee the continuation of collecting and publishing such information, a market-based charge is considered to be reasonable; an advance payment may be required. A schedule of charges should be published and made available to applicants together with information on the circumstances in which a charge may be levied or waived.'

13. In accordance with recital 20, public authorities should seek to guarantee that the environmental information which they compile or is compiled on their behalf is comprehensible, accurate and comparable.

14. The objectives of Directive 2003/4 are 'guarantee[ing] 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' (Article 1(a)) [8] and 'ensur[ing] that, as a matter of course, environmental information is

[7] – 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).

[8] – See also recital 8 in the preamble.

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' (Article 1(b)). [9] Article 1(b) adds that '[t]o this end the use, in particular, of computer telecommunication and/or electronic technology, where available, shall be promoted'. [10]

15. Article 2(1) defines 'environmental information' as '… any information in written, visual, aural, electronic or any other material form' that concerns (a) the state of the elements of the environment; (b) facts affecting or likely to affect the elements of the environment; (c) measures affecting or likely to affect the elements and factors referred to in (a) and (b) as well as measures or activities designed to protect those elements; (d) reports on the implementation of environmental legislation; (e) cost-benefit and other economic analyses and assumptions used within the framework of the measures and activities referred to in (c); (f) the state of human health and safety inasmuch as they are or may be affected by the state of the elements of the environment referred to in (a) or, through those elements, by any of the matters referred to in (b) and (c). [11]

16. A 'public authority' is defined in Article 2(2)(a) as, inter alia, 'government or other public administration, including public advisory bodies, at national, regional or local level'.

17. According to Article 2(3), '"Information held by a public authority" shall mean environmental information in its possession which has been produced or received by that authority'. Article 2(4) states that information is held for a public authority if it is '… physically held by a natural or legal person on behalf of a public authority'. [12]

18. Article 3 ('Access to environmental information upon request') states:

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

…

4. Where an applicant requests a public authority to make environmental information available in a specific form or format (including in the form of copies), the public authority shall make it so available unless:

[9] – See also recital 9 in the preamble.

[10] – See also recital 9 in the preamble.

[11] – See also recital 10 in the preamble.

[12] – See also recital 12 in the preamble.

(a) it is already publicly available in another form or format, in particular under Article 7, [13] which is easily accessible by applicants; or

(b) it is reasonable for the public authority to make it available in another form or format, in which case reasons shall be given for making it available in that form or format.

For the purposes of this paragraph, public authorities shall make all reasonable efforts to maintain environmental information held by or for them in forms or formats that are readily reproducible and accessible by computer telecommunications or by other electronic means. [14]

…

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

(a) officials are required to support the public in seeking access to information;

(b) lists of public authorities are publicly accessible; and

(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.

Member States shall ensure that public authorities inform the public adequately of the rights they enjoy as a result of this Directive and to an appropriate extent provide information, guidance and advice to this end.' [15]

19. Article 4 ('Exceptions') lists grounds on which Member States may refuse a request for environmental information, [16] including if the information requested is not held by or for the public authority to which the request is addressed (Article 4(1)(a)) and if the request is unreasonable (Article 4(1)(b)) or concerns material in the course of completion or unfinished documents or data (Article 4(1)(d)).

[13] – See point 22 below.

[14] – See also recital 14 in the preamble.

[15] – See also recital 15 in the preamble.

[16] – See also recital 16 in the preamble.

20. Article 5 (‘Charges’) provides:

‘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.

3. Where charges are made, public authorities shall publish and make available to applicants a schedule of such charges as well as information on the circumstances in which a charge may be levied or waived.’

21. In accordance with Article 6 (‘Access to justice’), [17]

‘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.

...’

22. Article 7 (‘Dissemination of environmental information’) states:

‘1. Member States shall take the necessary measures to ensure that public authorities organise the environmental information which is relevant to their functions and which is held by or for them, with a view to its active and systematic dissemination to the public, in particular by means of computer telecommunication and/or electronic technology, where available. [18]

…

17 – See also recital 19 in the preamble.

18 – See also recital 15 in the preamble.

Member States shall ensure that environmental information progressively becomes available in electronic databases which are easily accessible to the public through public telecommunication networks.

2. The information to be made available and disseminated shall be updated as appropriate and shall include at least:

(a) texts of international treaties, conventions or agreements, and of Community, national, regional or local legislation, on the environment or relating to it;

(b) policies, plans and programmes relating to the environment;

(c) progress reports on the implementation of the items referred to in (a) and (b) when prepared or held in electronic form by public authorities;

(d) the reports on the state of the environment referred to in paragraph 3;

(e) data or summaries of data derived from the monitoring of activities affecting, or likely to affect, the environment;

(f) authorisations with a significant impact on the environment and environmental agreements or a reference to the place where such information can be requested or found in the framework of Article 3;

(g) environmental impact studies and risk assessments concerning the environmental elements referred to in Article 2(1)(a) or a reference to the place where the information can be requested or found in the framework of Article 3.

…

6. Member States may satisfy the requirements of this Article by creating links to Internet sites where the information can be found.'

National law

23. In England and Wales, the Local Land Charges Register ('the Register') records, in accordance with the Local Land Charges Act 1975, charges relating to land in a particular area. The referring court explains that these local land charges are mainly prohibitions and restrictions on the use of land imposed under legislation by public authorities. A person may either carry out a 'personal search' by inspecting the Register or request from the relevant local authority an official certification showing the results of the search of the Register. The latter is called an 'official search' and, unlike for personal searches, authorities may set fees for information supplied in response to such requests. The order for reference states that, in 2010, the United Kingdom Government formed the view that the vast

majority of the information in the Register was environmental information and thus, in accordance with Directive 2003/4, no fee could be levied in respect of a personal search.

24. According to the referring court, conveyancers will want a search of the Register to be made before completing a property transaction. However, they often also make additional enquiries to seek information held by local authorities which is not covered by the local land charges system (such as, for example, whether there are proposed road schemes near a property).

25. For the purpose of such additional enquiries, the Law Society [19] has formulated two questionnaires which a person can send to the relevant authority. These include form 'CON29R' which is recommended for use in every transaction. [20] This is another type of official search. Alternatively, a person may carry out a personal search into other records held by the authority. The difficulty involved in accessing the information depends on how those records are kept and organised.

26. The referring court states that much of the information likely to be provided in response to a CON29R request will fall within the definition of 'environmental information' in Directive 2003/4.

27. Regulation 8 of the Local Authorities (England) (Charges for Property Searches) Regulations 2008 ('the Charges for Property Searches Regulations 2008') provides that a local authority may charge a person (including another local authority) for answering enquiries about a property (and thus including official searches). Any charge is in the local authority's discretion but must have regard to the costs to that authority of answering enquiries about the property. Regulation 8 does not apply '… to anything in respect of which a local authority may or must impose a charge apart from these Regulations' (Regulation 4(2)(a)). Thus, the referring court explains, the Charges for Property Searches Regulations 2008 were not intended to apply when environmental information is provided; a different regime is applied. [21]

28. The 'Local Authority Property Search Services — Costing and Charging Guidance', produced by the Department for Communities and Local Government to coincide with the enactment of the Charges for Property Searches Regulations 2008, offers guidance on what authorities may charge, using costing principles which conform to existing local authority accounting arrangements.

[19] – This is a professional body representing solicitors in England and Wales.

[20] – The other questionnaire, called form 'CON29O', is to be used for optional additional enquiries.

[21] – See points 29, 30 and 37 below.

29. Regulation 8 of the Environmental Information Regulations 2004 ('the EIR 2004'), which implemented Directive 2003/4 in the United Kingdom, [22] governs charging for making environmental information available. Regulation 8(2) precludes a public authority from charging an applicant for accessing any public registers or lists of environmental information held by it or for examining the information requested at the place which it makes available for that purpose. Under Regulation 8(3), no charge may exceed 'an amount which the public authority is satisfied is a reasonable amount'. Pursuant to Regulation 8(8), a public authority is to publish and make available to applicants a schedule of its charges.

30. Regulation 18 of the EIR 2004 incorporates the enforcement and appeals provisions of the Freedom of Information Act 2000, according to which any person may apply to the Information Commissioner ('the Commissioner') for a decision on whether a public authority has failed to deal with a request for environmental information in accordance with Part 2 of the EIR 2004 (of which Regulation 8 forms part). In such a case, the Commissioner examines the complaint and, if necessary, issues a decision notice (requiring the public authority to comply with the EIR 2004). The referring court states that it is confident that the Commissioner is an 'independent and impartial body established by law' for the purposes of Article 6(1) of Directive 2003/4 and that it itself falls under Article 6(2) of that directive. It may allow the appeal and/or substitute a new decision notice if it finds the Commissioner's notice to be unlawful. On such an appeal, the Tribunal may review factual findings *de novo* and receive new evidence. Its judgment may be appealed on a point of law to the Upper Tribunal.

Facts, procedure and questions referred

31. In East Sussex, district and borough councils (which are subordinate to East Sussex County Council) conduct official searches and hold information needed for responding to the majority of requests based on a CON29R form. East Sussex County Council receives many such requests because its responsibilities include roads, traffic schemes, railway schemes, public paths and common land. It supplies (by email) the information requested within two working days. It carries insurance for liabilities resulting from errors in the information provided.

32. Following the introduction of the Charges for Property Searches Regulations 2008, East Sussex County Council prepared and published a charging schedule for answering CON29R requests (included in the annex to the order for reference in this case). Charges range, depending on the information requested, from nil to GBP 10.00 per question answered. The schedule further states that '[t]he charges are based on estimated costs of answering questions, including an element of maintaining information systems to do so, divided by an estimate of volumes, based on the previous year'. With regard to highways, the guidance

[22] – Except in relation to Scottish public authorities.

notes (included in the same annex) state: 'for any information required that is not part of the CON29 process, please contact [the Highway Land Information Team] with your enquiry and we will advise you of the costs for our response'. According to the referring court, the hourly rate charged for each staff member includes both salary costs and an amount for overheads (for example, heating, lighting and internal services such as human resources and training). The Tribunal also found that no element of surplus or profit is included in the charges.

33. Since a conveyancing transaction typically involves the purchase of a property of considerable value, the referring court considers that the Council's charges are not likely to dissuade anyone from seeking information relevant to such a transaction or in any substantial way restrict their access to it.

34. According to the referring court, the Highway Land Information Team of East Sussex County Council has three staff members and some part-time support. About 60% of its work concerns CON29R requests for which it uses data that it holds in different forms, some paper-based and others computer-based (the referring court refers to all the data together as forming the team's 'database'). The team might need to seek information from other Council teams or departments. Parts of the team's database are maintained for other purposes and for use by other parts of the Council.

35. The referring court states that few questions in the CON29R questionnaire can be answered by an applicant inspecting 'raw data' held by the Council. Whilst the Highway Land Information Team is making efforts to offer greater access to such data, obstacles remain.

36. On 3 June 2011, PSG Eastbourne (a property search company and member of Property Search Group or 'PSG', which is a franchised network of similar businesses and a respondent in the main proceedings) requested from the Highway Land Information Team responses to certain CON29R questions about a property which, according to the referring court, was the subject of a conveyancing transaction. PSG Eastbourne was charged and paid GBP 17.00.

37. In the context of an internal review against the background of a long-running dispute with PSG Eastbourne over the lawfulness of the Council's charges, East Sussex County Council concluded that Regulation 8 of the EIR 2004 entitled it to make the charge. Following a complaint, the Commissioner decided on 29 January 2013 that East Sussex County Council had not charged PSG Eastbourne correctly because, in the Commissioner's view, the charge was calculated on a cost recovery basis whereas a 'reasonable amount' would have been limited to 'the disbursement costs associated with making the information available in the specified form i.e. postage and photocopying charges'.

38. On 1 March 2013, East Sussex County Council appealed against the Commissioner's decision. According to the referring court, the Commissioner

introduced in effect two new issues in the context of that appeal, namely: (i) the nature of the review to be performed by the Commissioner and the First-tier Tribunal in examining whether a charge exceeds a reasonable amount and (ii) the reasonableness of the charge, assuming that it can be used to cover more than mere disbursement costs. The First-tier Tribunal authorised PSG and the Local Government Association ('the LGA') [23] to join the proceedings. During the appeal, the Commissioner and PSG conceded that a charge of a reasonable amount could also include costs attributable to staff time spent on dealing with a request for information. The First-tier Tribunal agreed and considered it to be uncontested also that a public authority may impose a standard pre-fixed charge based on average costs.

39. Against that background, the referring court seeks guidance on the following questions:

'(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?'

40. Written observations were submitted by East Sussex County Council, the LGA, the Commissioner, PSG, the Danish and United Kingdom Governments and the European Commission. At the hearing, held on 11 December 2014, the same parties, with the exception of the United Kingdom Government, appeared and submitted oral argument.

[23] – This is a politically-led, cross-party organisation that works on behalf of councils.

Analysis

Preliminary remarks

41. The Aarhus Convention forms an integral part of EU law [24] and its wording and aim are to be taken into account in interpreting Directive 2003/4. [25] It establishes a set of environmental obligations (and corresponding rights for the public) organised around three pillars, namely: (i) access to environmental information, (ii) public participation in decision-making regarding the environment and (iii) access to justice. In the main proceedings, questions have arisen regarding obligations under the first and third of those pillars, which Directive 2003/4 is meant to implement. [26]

42. It is not contested that Directive 2003/4 applies in the main proceedings. The questions referred relate to (that part of the) information sought and obtained by PSG Eastbourne (through a CON29R form) which is relevant to the value of a property (transaction) but also constitutes environmental information within the meaning of Directive 2003/4. [27] It is also not disputed that the local authority held the information sought.

43. Finally, it is common ground that East Sussex County Council was not acting on a commercial basis when supplying information to PSG Eastbourne.

Question 1

44. Article 5(2) of Directive 2003/4 expressly allows Member States to charge subject to two conditions. First, charges may be imposed only for *supplying* environmental information. Second, such charges cannot exceed a *reasonable* amount. There is no definition of what 'supplying information' or a 'reasonable amount' entails. [28]

[24] – See judgment in *Lesoochranárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 30 and case-law cited.

[25] – See, for example, judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 37 and case-law cited.

[26] – See, for example, judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 37 and case-law cited. See also recital 5 in the preamble to Directive 2003/4.

[27] – Article 2(1) of Directive 2003/4. In any event, that was a matter for the referring court to determine (see judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 39 and case-law cited).

[28] – I note that not all language versions of Article 5(2) of Directive 2003/4 use a term (such as 'supplying' in the English version) which is distinct from the wording in Article 7. For example, the French version of Article 5(2) uses 'la mise à disposition' which corresponds to the wording in Article 7. However, the term 'supplying' in the English version of Article 5(2) corresponds with the term used in the English (authentic) version of Article 4(8) of the Aarhus Convention.

45. There is, moreover, no other basis in Directive 2003/4 for charging an applicant for access to environmental information upon request. [29]

46. As I see it, if an authority may not recover costs in a particular instance because they do not concern the supply of information, then the question of the reasonableness of the charge that the authority wishes to impose does not arise. I shall therefore begin with the meaning of 'supplying information' in Article 5(2).

47. Article 5 distinguishes between, on the one hand, supplying information (for which authorities may charge) and, on the other hand, access to any public registers or lists established and maintained (as referred to in Article 3(5)) and examination in situ of the information requested (for which authorities may not charge). Thus, the *act of supplying* an applicant with information in a particular form (Article 5(2)) is not the same as the various situations covered by Article 5(1).

48. Nor is it the same as that of collecting, holding and disseminating environmental information or informing the public where that information can be found.

49. The obligations in Articles 3 to 5 presuppose both that a public authority holds the environmental information to which access is sought and that the public knows what information is held where. That environmental information covers both data and different types of assessment of such data (such as implementation reports or economic analyses). [30] The information will exist in some material form (for example, written, visual, aural or electronic). [31] In principle, the applicant should be supplied the information in the format he has requested. [32]

50. As part of the practical arrangements which Member States must put in place in order to guarantee effective exercise of the right of access, Member States must make accessible registers or lists of environmental information which public authorities or information points hold, with clear indications of where such

The French (and equally authentic) version of the same provision of the Aarhus Convention uses the verb 'fournir'. (The third authentic version is in Russian.)

29 – See, with respect to Directive 90/313, judgment in *Commission* v *Germany*, C-217/97, EU:C:1999:395, paragraphs 55 and 58, where the Court held that Directive 90/313 authorised restrictions of the freedom of access to environmental information only in accordance with the criteria and in the cases expressly defined therein. This confirms that the general principle is that the public should be able to access environmental information without charge or restriction.

30 – See Article 2 of Directive 2003/4.

31 – See, for example, Article 2(1), 2(3) and 2(4) of, and recital 10 in the preamble to, Directive 2003/4.

32 – See Article 3(4) of Directive 2003/4.

information is to be found. [33] In this context, I understand a 'register' to mean an inventory of the environmental information held and through which that information can be searched and identified. By contrast, a database is the actual corpus of the environmental information held. Whilst a register might also contain the actual environmental information and thus might be combined with a database, it is none the less separate from the latter. [34]

51. Crucially for present purposes, Article 5(1) precludes an authority from charging those who seek access to such registers and lists and to environmental information for examination in situ for *any* costs involved. Thus, an authority may not charge for the costs of keeping and making available (i) such registers and lists and (ii) the corpus of environmental information to which such registers or lists refer or which an applicant seeks to examine in situ. Whilst, under Article 5(2), applicants may be charged for access sought in the form of supply of environmental information, I see no basis for reading the costs of supplying so as to cover also those two types of cost. That is because these costs are incurred in order to comply with the obligations under Directive 2003/4, in particular the obligation of providing access upon request, and thus to enable an applicant to seek and obtain access to information, regardless of the form of that access. [35] Indeed, if 'supplying' were to be read as including the establishing and maintaining of a register, list or database containing environmental information (whether paper-based or kept in some other format), the result would be to treat differently members of the public who request supply and those who merely request access within the meaning of Article 5(1) or obtain access as a result of dissemination. Both groups access the same information recorded in the same register or list and held in the same database. Yet the first group would be charged for the maintenance of the register and the database whereas the second group (correctly) would not. For the same reasons, an authority may not recover from an applicant the costs of complying with the obligation under Article 3(4) to make all reasonable efforts to hold and organise environmental information in readily reproducible and accessible forms.

52. Likewise, no charge may be made for access to environmental information which is disseminated to the public. Directive 2003/4 (like the Aarhus

[33] – See Article 3(5)(c) of Directive 2003/4.

[34] – See also UN-ECE, The Aarhus Convention: An implementation guide (second edition, 2014) ('the Implementation Guide'), pp. 102 and 103. Whilst the Implementation Guide is not legally binding (p. 9), the Court has regarded it as an explanatory document, capable of being taken into consideration, if appropriate, among other relevant material for the purpose of interpreting the Aarhus Convention (see, for example, judgments in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 38 and case-law cited, and *Edwards*, C-260/11, EU:C:2013:221, paragraph 34).

[35] – See also point 74 below.

Convention) distinguishes the obligation to disseminate information (Article 7 [36]) from the obligation to make available information to an applicant who requests it in a particular form (Articles 3 to 5). The obligation under Article 7 applies to all environmental information held by a public authority, including that which, in accordance with Article 7(2), a Member State must make available and disseminate (and update as appropriate). That obligation protects the public interest, irrespective of whether the public has in fact expressed an interest in the information listed or held. Holding and actively disseminating this (updated) information may well involve considerable cost (not least in terms of human resources and other general costs) and the material thus treated may also be used to respond to requests for supply of information. However, those costs are to be borne by the public purse.

53. Against that background, I would define 'supplying any environmental information', within the meaning of Article 5(2) of Directive 2003/4, as providing access upon request by giving such information to an applicant in the format that he specified and in circumstances other than those covered by Article 5(1). For the purposes of the present case, it is relevant that Article 5(2) covers the circumstance where the information is given in a manner that enables the applicant to consult and use it in a place and at a time of his choosing and thus independently of where and how that information is held and otherwise made available through other means of access.

54. Thus, public authorities may charge to cover the staff costs of reproducing the requested environmental information (for example, by photocopying or printing documentation or sending it by email) together with the cost of, for example, paper, toner and the use of a copying device. Article 4(1) of the Aarhus Convention confirms this interpretation. However, it also follows that a public authority may *not* recover, through a charge for supplying information, all or part of the costs of establishing and maintaining a database in which it has organised the environmental information it holds and which it uses to answer requests for information of the type listed in a questionnaire such as the CON29R form at issue in the main proceedings (Question 1(a)). [37]

55. Where the information sought is already held in the format requested and is readily accessible and reproducible, supplying essentially involves only reproduction. Thus, a charge for supplying information in such circumstances may not cover more than the reasonable cost of reproduction, which includes the costs of the staff time needed for the specific act of giving the environmental

[36] – The Implementation Guide (at p. 75) refers to this right under Article 7 as 'the active right of access'. It seems to me that, when viewed from the perspective of the beneficiaries of such access, this right might more logically be called passive. For that reason, I shall not use 'active' and 'passive' in describing the obligations (and corresponding rights) under Articles 3 to 5 and 7.

[37] – See point 34 above.

information requested to the applicant. But supplying information will not always be as easy and inexpensive as a simple act of reproduction. For example, the information held might not yet be organised in a readily reproducible and accessible manner; or it might be requested in a format other than that in which it is held by the authority.

56. In such circumstances, may the additional costs incurred in order to retrieve and organise the information which the applicant has requested and other general costs also be recovered on the basis of Article 5(2) of Directive 2003/4? This appears to be the essence of Question 1(b) concerning the recovery of overhead costs attributable to staff time needed for responding to an information request such as that at issue.

57. In so far as such costs are incurred in connection with requests for supply of information and necessary to give the information to the applicant, may the authority charge a reasonable amount for them?

58. Article 5(2) of Directive 2003/4 does not define 'reasonable amount'. Nor does Article 4(8) of the Aarhus Convention.

59. In general terms, it seems to me that, the mere fact that the legislator recognised that, due to its volume and complexity, the requested information may not be immediately available and thus that its retrieval in the form requested may put (considerable) burdens on the authority in terms of time and human resources [38] is an insufficient basis for charging the applicant for such burdens. These burdens exist even where no supply of information is requested and when the authority is complying with other obligations under Directive 2003/4. [39] I also note that there are legitimate grounds for refusing to give information in response to a request. [40] Moreover, an authority may not rely on its failure to comply with its obligations under, for example, Articles 3 and 7 of Directive 2003/4 in order to justify charging an applicant under Article 5(2) because, for example, it is holding information as raw data and has not yet organised that information (as required) in a manner that renders access possible. [41]

60. In my opinion, a charge which does not exceed a reasonable amount within the meaning of Article 5(2) is a charge which: (i) is set on the basis of objective factors that are known and capable of review by a third party; (ii) is calculated regardless of who is asking for the information and for what purpose; (iii) is set at a level that guarantees the objectives of the right of access to environmental

[38] – See, for example, Article 3(2) of Directive 2003/4.

[39] – See also, for example, Opinion of Advocate General Fennelly in *Commission* v *Germany*, C-217/97, EU:C:1999:34, point 26.

[40] – See Article 4 of Directive 2003/4.

[41] – See Article 1 of, and recitals 9 and 20 in the preamble to, Directive 2003/4.

information upon request and thus does not dissuade people from seeking access or restrict their right of access; and (iv) is no greater than an amount that is appropriate to the reason why Member States are allowed to make this charge (that is, that a member of the public has made a request for the supply of environmental information) and directly correlated to the act of supplying that information.

61. First, the amount of the charge must be set on the basis of objective criteria that are capable of being made public, in accordance with Article 5(3) of Directive 2003/4, and that enable the reasonableness of the charge to be reviewed, in accordance with Article 6.

62. Second, a request for supply of information does not require an applicant to state an interest. [42] Thus, in setting the amount, it is of no relevance who requests supply of information and why.

63. Third, the amount must take account of the fact that access to environmental information through supply of that information contributes to a greater awareness of environmental matters, debate and participation in decision-making in such matters and ultimately a better environment. [43]

64. That was one of the considerations which led the Court in Case C-217/97 *Commission* v *Germany* to decide, in relation to Article 5 of Directive 90/313, that, given the objective of that directive, the charge may not be set at a level which dissuades people from seeking access or which restricts their right of access. [44]

65. The same reasoning must apply to Article 5(2) of Directive 2003/4, because the latter directive is intended to expand access to information further. [45] Indeed, if costs become unreasonably high, only individuals with deep wallets may wish (or be able) to pay for requesting environmental information. [46] If costs are allowed to be set at such a level, persons may therefore be dissuaded from submitting requests for environmental information. [47]

[42] – See Article 3(1) of, and recital 8 in the preamble to, Directive 2003/4. Compare with the use of 'prove' (instead of 'state') in Article 3(1) of Directive 90/313.

[43] – See recital 1 in the preamble to Directive 2003/4.

[44] – Judgment in *Commission* v *Germany*, C-217/97, EU:C:1999:395, paragraph 47; Opinion of Advocate General Fennelly in *Commission* v *Germany*, C-217/97, EU:C:1999:34, point 23.

[45] – See recital 2 in the preamble to Directive 2003/4.

[46] – See also Opinion of Advocate General Fennelly in *Commission* v *Germany*, C-217/97, EU:C:1999:34, point 25.

[47] – See also the Implementation Guide which states (at p. 94) that '[t]he Convention embraces the concept that if information is to be truly accessible it must also be affordable'.

66. Fourth, a charge is of a reasonable amount if it covers costs that are directly correlated to the act of supplying information in response to a specific request. For reasons which I have already set out in connection with what constitutes 'supplying' information, a charge cannot cover costs relating to the collecting, holding, maintaining and disseminating of environmental information that are incurred irrespective of such a request. [48]

67. Despite the fact that Directive 90/313 did not distinguish between direct and indirect costs, the Court in Case C-217/97 *Commission* v *Germany* concluded that a Member State was precluded from charging for indirect costs incurred in connection with searching for and collecting information. The use of the term 'reasonable' meant that Member States could not '… pass on to those seeking information the entire amount of the costs, in particular indirect costs, actually incurred for the State budget in conducting an information search'. [49] Moreover, Article 5 did not authorise Member States to charge for 'the administrative tasks connected with a request for information'. [50] However, the Court did not review in detail the types of charge under German law (according to which the amount of the charge depended on the authorities' contribution in terms of effort and time) because the Commission had failed to establish that the legislation did not comply with the aim of Article 5 of Directive 90/313. [51]

68. The legislative history of Directive 2003/4 and the wording of recital 18 have resulted in uncertainty on whether that element of the Court's reasoning in Case C-217/97 *Commission* v *Germany* can be transposed to Article 5(2) of Directive 2003/4.

69. Unlike the Commission (which had not addressed these points in its initial proposal), [52] the European Parliament proposed stating explicitly (in the recitals and in the enacting terms) that a charge should not exceed the actual cost and should not include the cost of staff time spent on searches. [53] Whilst the

[48] – See points 47 to 54 above.

[49] – Judgment in *Commission* v *Germany*, C-217/97, EU:C:1999:395, paragraph 48.

[50] – Judgment in *Commission* v *Germany*, C-217/97, EU:C:1999:395, paragraph 57.

[51] – Judgment in *Commission* v *Germany*, C-217/97, EU:C:1999:395, paragraph 52.

[52] – In the Commission's initial proposal, the content of draft Article 5(3) and the proposed text of (what was to become) recital 18 were similar to the wording of Article 5(1) of Directive 2003/4. See recital 21 in the preamble to the Proposal for a Directive of the European Parliament and of the Council on public access to environmental information, COM(2000) 402 final (OJ 2000 C 337 E, p. 156).

[53] – European Parliament legislative resolution on the proposal for a Directive of the European Parliament and of the Council on public access to environmental information, COM(2000) 402 — C5-0352/2000 — 2000/0169(COD).

Commission in essence agreed with those proposals, [54] the Council favoured including fewer details on what a charge under what had by now become (draft) Article 5(2) could or could not cover. The Council 'could not accept … that charges may not cover time spent on searches …: searches may [be] very time-consuming and costly, freedom of charge may give rise to frivolous requests for information …'. [55]

70. The Parliament maintained its position. It even suggested adding in the enacting terms that a charge 'shall not exceed the actual cost of reproducing the material requested'. [56] The Commission could not agree with that proposal: it favoured not going beyond the Aarhus Convention and argued that, since the proposed directive was a framework directive, Member States should enjoy a certain degree of flexibility when transposing it into national law. [57]

71. The text of Article 5(2) as enacted does not reflect any element of those discussions. By contrast, recital 18 states that 'as a general rule, charges may not exceed actual costs of producing the material in question', though a market-based charge is deemed to be reasonable 'where public authorities make available environmental information on a commercial basis, and where this is necessary in order to guarantee the continuation of collecting and publishing such information'.

72. To start with, recital 18 cannot be given the same weight as Article 5(2). After all, the legislator's decision is to be found only in the enacting terms, that is, the legislative part of a directive (or any other act). Recitals are but one element of the context within which to interpret enacting terms. They cannot themselves lay down norms. [58]

54 – Amended proposal for a Directive of the European Parliament and of the Council on public access to environmental information, COM(2001) 303 final (OJ 2001 C 240 E, p. 289).

55 – Common Position (EC) No 24/2002 adopted by the Council on 28 January 2002 (OJ 2002 C 113 E, p. 1). I understand the (curious) reference in the English text to 'freedom of charge' to mean 'the absence of a charge'.

56 – European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on public access to environmental information and repealing Council Directive 90/313/EEC, 11878/1/2001 — C5-0034/2002 — 2000/0169(COD); Position of the European Parliament adopted at second reading on 30 May 2002 with a view to the adoption of European Parliament and Council Directive 2002/…/EC on public access to environmental information and repealing Council Directive 90/313/EEC.

57 – Opinion of the Commission pursuant to Article 251(2), third subparagraph, point (c), of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a Directive of the European Parliament and of the Council on public access to environmental information amending the proposal of the Commission pursuant to Article 250(2) of the EC Treaty, COM/2002/498 final.

58 – See, for example, judgment in *Caronna*, C-7/11, EU:C:2012:396, paragraph 40 and case-law cited. This principle is reflected also in the 'Joint Practical Guide of the European Parliament, the Council and the Commission for persons involved in the drafting of European Union legislation', 2013, Guideline 10.

73. That said, the second sentence in particular of recital 18 cannot be ignored, nor can the reason for its inclusion. That sentence relates to the two limitations attached to the right to charge for supplying information: that is, what may be charged for ('the cost of producing the material in question') and the amount of costs that may be recovered ('the actual costs' incurred by a public authority for the supply of information).

74. In my view, a charge of a 'reasonable amount' must be based on the costs actually incurred in connection with the act of supplying environmental information in response to a specific request. That will include the costs of staff time spent on searching for and producing the information requested and the cost of producing it in the form requested (which may vary). However, I do not consider it permissible for a charge also to seek to recover overheads such as heating, lighting or internal services. Whilst part of such overheads might indeed be attributable to the process of putting in place the conditions that enable an authority to give access to environmental information upon request, they (like the costs of maintaining and giving access to registers and lists of environmental information [59]) are not incurred solely in connection with the supply of information in response to a specific request. As I read recital 18, it confirms that information. [60]

Question 2

Admissibility

75. Question 2 asks whether Articles 5(2) and 6 of Directive 2003/4 preclude a rule of national law according to which a charge for supply of environmental information 'shall not exceed an amount which the public authority is satisfied is a reasonable amount' if the authority's decision in that regard is subject to administrative and judicial review as provided under national law.

76. Under a strict interpretation of English law, the referring court explains, the phrase 'which the public authority is satisfied is a reasonable amount' means that a challenge to a charge can only succeed if the public authority's decision about what was a reasonable amount was itself 'unreasonable' within the meaning of administrative law (that is, irrational, illegal or unfair) and that the scope for a challenge to any relevant factual conclusions reached by the authority is very limited. No other details regarding the organisation of administrative and judicial review were included in the request for a preliminary ruling.

[59] – See points 51 and 52 above.

[60] – I recall that it is common ground that, in the main proceedings, the public authority was not acting on a commercial basis when supplying information (see point 43 above). For the purposes of the present case, I see no need to elaborate on the part of recital 18 relating to the making available of environmental information on a commercial basis.

77. In its written observations, the United Kingdom Government did explain that 'administrative and judicial review as provided under English law', to which Question 2 refers, encompasses a number of grounds of review of which one is '*Wednesbury* unreasonableness'. [61]

78. Both the Commission and the United Kingdom Government have queried the need to answer this question. After all, the referring court itself states that the issue (raised by Question 2) 'remains outstanding between the parties' and that it 'is not clear if it will make any practical difference in this case but it could affect the approach of the Tribunal and the Commissioner in future'.

79. I recall the Court's consistent case-law to the effect that the Court may refuse to give a preliminary ruling only where it is quite obvious that the questions posed bear no relation to the actual facts of the main action or to its purpose, 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. [62] The referring court alone can determine, in the light of the particular circumstances of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions submitted to the Court. [63]

80. I see no basis for calling into question the referring court's decision, despite its doubts, to include Question 2 in its order for reference. This question should therefore also be answered.

Substance

81. The condition of reasonableness in Article 5(2) of Directive 2003/4 concerns the amount of any charge, not the public authority's decision itself. Article 5(2) does not contain a renvoi to what is a reasonable charge under national law. Where the terms of a provision of EU law make no express reference to the law of the Member States for the purposes of determining that provision's meaning and scope, they must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question. [64] That

[61] – See *Associated Provincial Picture Houses Ltd* v *Wednesbury Corporation*, [1948] 1 KB 223, [1947] EWCA Civ 1. The scope of judicial review is a complex subject. For a detailed examination, see for example Supperstone, M., Goudie, J., Walker, P., and Fenwick, H., *Judicial Review*, fifth edition (Butterworths Law, 2014), and Fordham, M., *Judicial Review*, sixth edition (Hart Publishing, 2012).

[62] – See, for example, judgment in *Kušionová*, C-34/13, EU:C:2014:2189, paragraph 38 and case-law cited, and judgment in *Fish Legal and Shirley*, C-279/12, EU:C:2013:853, paragraph 30 and case-law cited.

[63] – See, for example, judgment in *Todaro Nunziatina & C.*, C-138/09, EU:C:2010:291, paragraph 25 and case-law cited.

[64] – See, for example, judgment in *Deutsche Umwelthilfe*, C-515/11, EU:C:2013:523, paragraph 21 and case-law cited.

principle applies in conjunction with the principle that, where EU law lacks precision, it is for the Member States, when transposing a directive, to ensure that it is fully effective; in so doing they retain a broad discretion as to the choice of methods. [65]

82. Thus, Article 5(2) requires public authorities to ensure that their charges do not exceed a reasonable amount, judged by the yardstick of what a 'reasonable amount' means objectively under EU law. [66] That does not, as such, preclude a rule of national law according to which a public authority must satisfy itself that a charge levied meets that standard. Indeed, one might expect that as a matter of good governance a public authority should, in the first instance, exercise such control over the level of charge set. This step is prior to, and separate from, the administrative and judicial review required by (respectively) Article 6(1) and (2) of Directive 2003/4.

83. What of the final element of Question 2, namely '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*' (emphasis added)?

84. As I have indicated already, [67] the Court has been provided with relatively little material on national law by the referring court; and, although a hearing was held, the United Kingdom Government did not attend. In the context of a reference for a preliminary ruling, it is moreover clearly the function of the Court to rule exclusively on the interpretation of EU law and that of the national court to interpret and apply national law in accordance with the guidance given in answer to its questions. [68] It would therefore be inappropriate to explore further here the standards of, and limitations to, English judicial review. The focus must instead be exclusively on what obligations EU law lays down.

85. In the present context, Article 6(1) and (2) of Directive 2003/4 requires a Member State to ensure that there is (first) administrative and (then) judicial review of whether a public authority's decision on what constitutes a reasonable charge is in conformity with the autonomous EU law meaning of what is 'reasonable' under Article 5(2) of Directive 2003/4. That is what the review process must verify. The availability of such review is essential in order to guarantee effective enforcement of the public's right of access to environmental information enshrined in Directive 2003/4. [69] Thus, a Member State must

[65] – See, for example, judgment in *Commission* v *United Kingdom*, C-530/11, EU:C:2014:67, paragraph 46 and case-law cited.

[66] – See points 58 to 74 above.

[67] – See point 76 above.

[68] – See, for example, judgment in *Transportes Urbanos y Servicios Generales*, C-118/08, EU:C:2010:39, paragraphs 23 and 25.

[69] – See also, for example, the Implementation Guide, p. 15.

guarantee that the review procedure that it provides enables the reasonableness of a particular charge levied to be measured against the standard of reasonableness for such charges laid down by EU law. It is for the competent national court to interpret national law in such a way as to provide that review. [70]

Conclusion

86. In the light of all the foregoing considerations, I am of the opinion that the Court should answer the request for a preliminary ruling from the First-tier Tribunal (Information Rights) (United Kingdom) to the following effect:

– 'Supplying any environmental information' in 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 to mean providing access upon request by giving such information to an applicant in the format that he specified and in circumstances other than those covered by Article 5(1). Article 5(2) covers the circumstance where the information is given in a manner that enables the applicant to consult and use it in a place and at a time of his choosing and thus independently of where and how that information is held and otherwise made available through other means of access.

– Article 5(2) of Directive 2003/4 does not authorise a public authority to recover, through a charge for supplying information, all or part of the costs of establishing and maintaining a database in which it has organised the environmental information it holds and which it uses to answer requests for information of the type listed in a questionnaire such as that at issue in the main proceedings.

– A charge which does not exceed a reasonable amount within the meaning of Article 5(2) of Directive 2003/4 is a charge which: (i) is set on the basis of objective factors that are known and capable of review by a third party; (ii) is calculated regardless of who is asking for the information and for what purpose; (iii) is set at a level that guarantees the objectives of the right of access to environmental information upon request and thus does not dissuade people from seeking access or restrict their right of access; and (iv) is no greater than an amount that is appropriate to the reason why Member States are allowed to make this charge (that is, that a member of the public has made a request for the supply of environmental information) and directly correlated to the act of supplying that information.

[70] – On the duty to apply and interpret national law in accordance with EU law, see, for example, judgments in *Ryanair*, C-30/14, EU:C:2015:10, paragraph 31 and case-law cited, and *Dominguez*, C-282/10, EU:C:2012:33, paragraph 24 and case-law cited.

– In particular, a charge of a 'reasonable amount' under Article 5(2) of Directive 2003/4 is to be based on the costs actually incurred in connection with the act of supplying environmental information in response to a specific request. That will include the costs of staff time spent on searching for and producing the information requested and the cost of producing it in the form requested (which may vary). However, it is not permissible for such a charge also to seek to recover overheads such as heating, lighting or internal services. Whilst part of such overheads might indeed be attributable to the process of putting in place the conditions that enable an authority to give access to environmental information upon request, they (like the costs of maintaining and giving access to registers and lists of environmental information) are not incurred solely in connection with the supply of information in response to a specific request.

– Article 5(2) of Directive 2003/4 requires public authorities to ensure that their charges do not exceed a reasonable amount, judged by the yardstick of what a 'reasonable amount' means objectively under EU law. That does not, as such, preclude a rule of national law according to which a public authority must satisfy itself that a charge levied meets that standard. This step is prior to, and separate from, the administrative and judicial review required by (respectively) Article 6(1) and (2) of Directive 2003/4.

– Article 6(1) and (2) of Directive 2003/4 requires a Member State to ensure that there is (first) administrative and (then) judicial review of whether a public authority's decision on what constitutes a reasonable charge is in conformity with the autonomous EU law meaning of what is 'reasonable' under Article 5(2) of Directive 2003/4. Thus, a Member State must guarantee that the review procedure that it provides enables the reasonableness of a particular charge levied to be measured against the standard of reasonableness for such charges laid down by EU law. It is for the competent national court to interpret national law in such a way as to provide that review.