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Press and Information

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Judgment of the Court of Justice in Case C-552/07

*Commune de Sausheim v. Pierre Azelvandre*

**THE RIGHT OF PUBLIC ACCESS TO INFORMATION APPLIES TO RELEASES OF  
GENETICALLY MODIFIED ORGANISMS**

*Member States cannot invoke a public order exception so as to prevent the disclosure of the  
location of release of genetically modified organisms*

Mr Pierre Azelvandre wishes to know the location of open field tests of genetically modified organisms (GMOs) which have taken place within his commune. On 21 April 2004, he requested the Mayor of Sausheim (Haute-Alsace) to disclose to him, concerning each release having taken place within that commune, the public notice, the planting record showing the parcel of land that has been planted, and the prefectoral covering letter relating to those documents. He also requested the information file on each new release which would take place in 2004.

In the absence of an answer to his request, he applied to the Committee on Access to Administrative Documents (CAAD) for disclosure of those documents. On 24 June 2004, the committee issued a favourable opinion concerning the disclosure of the public notice and the first page of the prefectoral covering letter. By contrast, it decided against the disclosure of the planting record for the parcels of land and of the map showing where the releases had occurred, on the ground that such disclosure would prejudice the privacy and safety of the farmers concerned.

Following that opinion, as the Mayor of Sausheim had not disclosed all of the documents of the file, Mr Azelvandre challenged that refusal before the French administrative court.

The Conseil d'État, hearing the case at first and last instance, refers the question to the Court of Justice of the definition of 'location of release' which may not be kept confidential in accordance with the directive of 12 March 2001 on the deliberate release into the environment of GMOs<sup>1</sup> and of the interpretation of the relevant public information obligations, arising under Community law. In particular, the Court is asked whether the national authorities can prevent the disclosure of the planting record for the parcels of land and of the map showing where the releases had occurred on the ground that it prejudice public order and other interests protected by law.

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<sup>1</sup> Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC (OJ 2001 L 106, p. 1)

## **The location of release**

Because of the precautionary principle and the risks to the environment and human health, the directive created a transparent system for the authorisation procedure of measures relating to the preparation and implementation of releases. It established not only procedures for consultation of the public and, if appropriate, of groups on a proposed deliberate release of GMOs, but also a right of public access to information relating to that operation and the establishment of public registers which must include information on the location of every release of GMOs.

Thus, persons wishing to release GMOs into the environment are, in accordance with the directive, to submit a notification to the competent national authorities, which must include a technical dossier containing the required information, namely: 1) the location and size of the release sites, the description of the release site ecosystem, including climate, flora and fauna and the proximity to officially recognised biotopes or protected areas which may be affected, for genetically modified higher plants; 2) the geographical location and grid reference of the release site(s) and the description of target and non-target ecosystems likely to be affected, for the other GMOs.

It follows from the connection thereby established between the notification procedure and the access to information relating to the deliberate release of GMOs that, **save in the case of exemptions under the directive, the relevant public may request the disclosure of all information submitted by the notifier in the context of the authorisation procedure relating to that release.**

Therefore, **the 'location of release' is determined by all the information relating to the location of the release as submitted by the notifier to the competent authorities of the Member State on whose territory the release is to take place in accordance with the directive.**

## **The right of third party access to information relating to the release**

The directive precisely defines the confidentiality which can apply to the various information that is disclosed in the context of the notification procedure and exchange of information provided for by the directive. Therefore, confidential information notified to the Commission and to the competent authority or exchanged in accordance with the directive, and also information liable to harm a competitive position and protecting intellectual property rights, cannot be disclosed. Furthermore, the competent authority decides, after consulting the notifier, what information must be kept confidential in the light of the 'verifiable justification' given by the notifier. **Therefore, the information relating to the location of the release can in no case be kept confidential. In those circumstances, considerations relating to the protection of public order and other secrets protected by law, such as specified by the referring court, cannot constitute reasons capable of restricting access to the information listed by the directive, including in particular those relating to the location of release.**

That interpretation is substantiated by the requirement, laid down in the directive, that information concerning the environmental risk assessment may not be kept confidential. Furthermore, a Member State cannot invoke an exemption provision provided for by the

directives on freedom of access to environmental information in order to refuse access to information which should be in the public domain<sup>2</sup>.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS, DE, EN, ES, EL, HU, IT, PL, PT, SK*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-552/07>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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<sup>2</sup> 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 158, p. 56-58).