

## JUDGMENT OF THE COURT (Fourth Chamber)

22 December 2010 (\*)

(Preliminary rulings – Aarhus Convention – Directive 2003/4/EC – Public access to information in environmental matters – Directive 2003/87/EC – Scheme for greenhouse gas emission allowance trading – Regulation (EC) No 2216/2004 – Standardised, secured system of registries – Access to data on greenhouse gas emission allowance trading – Refusal to report – Central administrator – Administrators of national registries – Confidential nature of the data held in the registries – Exceptions)

In Case C-524/09,

REFERENCE for a preliminary ruling under Article 234 EC from the tribunal administratif de Paris (France), made by decision of 6 November 2009, received at the Court on 12 November 2009, in the proceedings

**Ville de Lyon**

v

**Caisse des dépôts et consignations,**

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader (Rapporteur) and A. Prechal, Judges,

Advocate General: J. Kokott,

Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 7 October 2010,

after considering the observations submitted on behalf of:

- the Ville de Lyon, by C. Enckell, avocat,
- the Caisse des dépôts et consignations, by T. Garancher and L. Deruy, avocats,
- the French Government, by G. de Bergues and S. Menez, acting as Agents,
- the Austrian Government, by E. Riedl, acting as Agent,
- the European Commission, by O. Beynet and E. White, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 October 2010,

gives the following

### **Judgment**

- 1 This reference for a preliminary ruling concerns the interpretation, in the context of the scheme established by Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32), in the version resulting from Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004 (OJ 2004 L 338, p. 18) ('Directive 2003/87'), of the detailed rules for access to information on greenhouse gas emission allowance trading held by administrators of national registries, as defined in Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries pursuant to Directive 2003/87 and Decision No 280/2004/EC of the European Parliament and of the Council (OJ 2004 L 386,

p. 1), in conjunction with 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 reference has been made in proceedings between the Ville de Lyon and the Caisse des dépôts et consignations ('the CDC') concerning the latter's refusal to supply the Ville de Lyon with data relating to volumes of greenhouse gas emission allowances sold by certain operators in 2005.

### **Legal context**

#### *International law*

- 3 The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as the 'Aarhus Convention', was signed 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(4) of that convention provides:

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

...

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

...

- (f) the confidentiality of personal data and/or files relating

to a natural person where that person has not consented to the disclosure of the information to the public, where such confidentiality is provided for in national law;

...

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

### *European Union legislation*

#### Directive 2003/4

5 Article 2 of Directive 2003/4, entitled 'Definitions', provides in paragraph (1)(a) to (c):

'For the purposes of this Directive:

1. "Environmental information" shall mean any information in written, visual, aural, electronic or any other material form on:

(a) the state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites ...;

(b) factors, such as ... emissions, discharges and other releases into the environment, affecting or likely to affect the elements of the environment referred to in (a);

(c) measures (including administrative measures), such as policies, legislation, plans, programmes, environmental agreements, and activities 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; ...'

6 Under Article 3(1) of that directive, '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'. Article 3(3) further provides that '[i]f a request is formulated in too general a manner, the public authority shall as soon as possible, and at the latest within the timeframe laid down in paragraph 2(a), ask the applicant to specify the request and shall assist the applicant in doing so, e.g. by providing information on the use of the public registers referred to in paragraph 5(c) ...'.

7 Article 4 of that same directive, entitled 'Exceptions', provides in paragraph 2:

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

...

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

...

The grounds for refusal mentioned in paragraphs 1 and 2 shall be interpreted in a restrictive way, taking into account for the particular case the public interest served by disclosure. In every particular case, the public interest served by disclosure shall be weighed against the interest served by the refusal. Member States may not, by virtue of paragraph 2(a), (d), (f), (g) and (h), provide for a request to be refused where the request relates to information on emissions into the environment.

...

## Directive 2003/87

- 8 Article 1 of Directive 2003/87 states that the purpose of that directive is to establish a scheme for greenhouse gas emission allowance trading within the European Union ('the EU') in order to promote reductions of emissions of greenhouse gases, particularly carbon dioxide, in a cost-effective and economically efficient manner.
- 9 That directive thus seeks to implement the EU's obligations to reduce emissions under the Kyoto Protocol to the United Nations Framework Convention on Climate Change. That protocol was approved on behalf of the European Community by Council Decision 2002/358/EC of 25 April 2002 (OJ 2002 L 130, p. 1).
- 10 Article 11 of Directive 2003/87 provides for an initial period for allocation and issue of allowances from 1 January 2005 to 31 December 2007, then for allocation periods of five years each, beginning on 1 January 2008.
- 11 The conditions and procedures under which the national authorities are to allocate allowances to operators of installations on the basis of a national allocation plan during those allocation periods are set out in Articles 9 to 11 of Directive 2003/87. Moreover, under Articles 12(3) and 14(3) of that directive, Member States are to ensure (i) that, by 30 April each year at the latest, the operator of each installation surrenders a number of allowances equal to the total emissions from that installation during the preceding calendar year as verified in accordance with Article 15, and that those allowances are subsequently cancelled, and (ii) that each operator of an installation reports the emissions from that installation during each calendar year to the competent authority after the end of that year.

12 Recital (13) in the preamble to that directive states that '[i]n order to ensure transparency, the public should have access to information relating to the allocation of allowances and to the results of monitoring of emissions, subject only to restrictions provided for in Directive 2003/4...'

13 Article 17 of Directive 2003/87, entitled 'Access to information', provides:

'Decisions relating to the allocation of allowances, information on project activities in which a Member State participates or authorises private or public entities to participate, and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority, shall be made available to the public in accordance with Directive 2003/4/EC.'

14 Article 19(2) of Directive 2003/87 provides, first, that any person may hold allowances and, second, that the registry is to be accessible to the public and contain separate accounts to record the allowances held by each person to whom and from whom allowances are issued or transferred.

15 Article 19(3) of that directive states: '[i]n order to implement this Directive, the Commission shall adopt a Regulation in accordance with the procedure referred to in Article 23(2) for a standardised and secured system of registries in the form of standardised electronic databases containing common data elements to track the issue, holding, transfer and cancellation of allowances, to provide for public access and confidentiality as appropriate and to ensure that there are no transfers incompatible with obligations resulting from the Kyoto Protocol. ...'

16 Article 20(1) and (2) of that directive provide:

'1. The Commission shall designate a Central Administrator to maintain an independent transaction log

recording the issue, transfer and cancellation of allowances.

2. The Central Administrator shall conduct an automated check on each transaction in registries through the independent transaction log to ensure there are no irregularities in the issue, transfer and cancellation of allowances.'

#### Regulation No 2216/2004

17 Article 8 of Regulation No 2216/2004, entitled 'Registry administrators', provides:

'1. Each Member State and the Commission shall designate a registry administrator to operate and maintain its registry in accordance with the provisions of this Regulation.

...

3. The Member States and the Commission shall retain ultimate responsibility and authority for the operation and maintenance of their registries.

4. The Commission shall coordinate the implementation of the requirements of this Regulation with the registry administrators of each Member State and the Central Administrator.'

18 In section 1, entitled 'Reporting and Confidentiality', of Chapter III of Regulation No 2216/2004, relating to 'Contents of the registries', Article 9 of that regulation provides, under the title 'Reporting':

'1. Each registry administrator shall make available the information listed in Annex XVI at the frequencies and to the recipients set out in Annex XVI in a transparent and organised manner via his registry web site. Registry administrators shall not release additional information held in the registry.

2. The Central Administrator shall make available the information listed in Annex XVI at the frequencies and to the recipients set out in Annex XVI in a transparent and organised manner via the Community independent transaction log web site. The Central Administrator shall not release additional information held in the Community independent transaction log.

3. Each web site shall allow the recipients of the reports listed in Annex XVI to query those reports using search facilities.

4. Each registry administrator is responsible for the accuracy of the information that originates from his registry and is made available via the Community independent transaction log website.

5. Neither the Community independent transaction log nor registries shall require account holders to submit price information concerning allowances or Kyoto units.'

19 In the version applicable at the material time in the main proceedings, under the title 'Confidentiality', Article 10 of Regulation No 2216/2004, which is found in the same section 1 of the aforementioned Chapter III, provides in paragraphs 1 and 2:

'1. All information, including the holdings of all accounts and all transactions made, held in the registries and the Community independent transaction log shall be considered confidential for any purpose other than the implementation of the requirements of this Regulation, Directive 2003/87/EC or national law.

2. Information held in the registries may not be used without the prior consent of the relevant account holder except to operate and maintain those registries in accordance with the provisions of this Regulation.'

20 Under the title 'Communication link between the Community independent transaction log and the general public, and each registry and the general public', paragraphs 5 and 6 of Annex XV to Regulation No 2216/2004 are worded as follows:

'5. The public area of the website of the Community independent transaction log and the public website of a registry shall not require authentication of its users representing the general public.

6. The public area of the Community independent transaction log website and the public area of a registry website shall not permit its users representing the general public to directly access data from the database of the Community independent transaction log or the database of that registry. Data which is publicly accessible in accordance with Annex XVI shall be accessed via a separate database.'

21 Annex XVI to Regulation No 2216/2004, entitled 'Reporting requirements of each registry administrator and the Central Administrator', contains a section relating to 'Publicly available information from the Community independent transaction log', which reads as follows:

'11. The Central Administrator shall display and update the information in paragraph 12 in respect of the registry system on the public area of the Community independent transaction log's web site, in accordance with the specified timing.

12. The following information for each completed transaction relevant for the registries system for year X shall be displayed from 15 January onwards of year (X+5):

...

- (c) account holder name of the transferring account: the holder of the account (person, operator, Commission, Member State);
- (d) account holder name of the acquiring account: the holder of the account (person, operator, Commission, Member State);
- (e) allowances or Kyoto units involved in the transaction by unit identification code comprising the elements set out in Annex VI;
- ...
- (g) date and time at which the transaction was completed ....
- ...

22 That annex also contains a section, entitled 'Information from each registry to be made available to account holders', which states:

- '13. Each registry administrator shall display and update the information in paragraph 14 in respect of its registry on the secure area of that registry's web site, in accordance with the specified timing.
- 14. The following elements for each account, by unit identification code comprising the elements set out in Annex VI, shall be displayed on the account holder's request to that account holder only:
  - (a) current holdings of allowances or Kyoto units;
  - (b) list of proposed transactions initiated by that account holder, detailing for each proposed transaction the elements in paragraph 12(a) to (f), the date and time at which the transaction was

proposed (in Greenwich Mean Time), the current status of that proposed transaction and any response codes returned consequent to the checks made pursuant to Annex IX;

- (c) list of allowances or Kyoto units acquired by that account as a result of completed transactions, detailing for each transaction the elements in paragraph 12(a) to (g);
- (d) list of allowances or Kyoto units transferred out of that account as a result of completed transactions, detailing for each transaction the elements in paragraph 12(a) to (g).'

#### *National law*

- 23 Article 1 of Law No 78-753 of 17 July 1978 laying down various measures to improve relations between administrative authorities and the public and various administrative, social and fiscal provisions (JORF, 18 July 1978, p. 2851), in the version applicable at the material time in the main proceedings ('Law No 78-753'), provides in the first and second paragraphs of Article 1:

'The right of any person to information is specified and guaranteed by the provisions of Chapters I, III and IV of this title as regards freedom of access to administrative documents.

For the purposes of Chapters I, III and IV of this title, "administrative documents" shall mean documents drawn up or held by the State, local authorities and other public law persons or private law persons responsible for the administration of a public service, in the context of their public service duties, irrespective of the medium used for the capture, storage or transmission of the information in those documents ...'.

24 Article 6 II of that law provides that '[a]dministrative documents, the supply of which would adversely affect ... commercial or industrial confidentiality, shall not be supplied save to the person concerned'.

25 In environmental matters, public access to environmental information is governed by specific provisions in the French Environmental Code, Article L. 124-1 of which reads as follows:

'The right of any person to have access to environmental information held, received or drawn up by or for the public authorities referred to in Article L. 124-3 shall be exercised under the conditions defined by the provisions of Title I of Law No 78-753 ...'.

26 Article L. 124-2 of that code is worded as follows:

'Any information available, irrespective of the medium, the subject of which is:

(1) The state of the elements of the environment, inter alia air, atmosphere, water, soil, land, landscape, natural sites, coastal or marine areas and biological diversity, as well as the interaction among these elements;

(2) Decisions, activities and factors, in particular substances, energy, noise, radiation, waste, emissions, discharges and other releases likely to affect the state of the elements referred to in (1);

...

(5) The relationships established by or on behalf of the public authorities in respect of the application of environment-related legislative and regulatory provisions;

...

shall be considered to be environmental information for the purposes of the present chapter’.

27 The first paragraph of Article L. 229-16 of that code provides for the creation and maintenance of a national registry of greenhouse gas emission allowances recording the allowances issued, held, transferred and cancelled (‘the national registry’). The third paragraph of that article states that the registry is accessible to the public in accordance with the conditions laid down by decree.

28 Decree No 2004-1412 of 23 December 2004 relating to the national registry of greenhouse gas emission allowances provided for in Article L 229-16 of the Environmental Code (JORF, 28 December 2004, p. 22123) was enacted in that regard. That decree provides that the CDC is responsible for setting up and maintaining that national registry. Article 2 of that decree provides:

‘1. – The missions of the [CDC] pursuant to the present Decree include:

...

6. Making available to the public, on a specialised internet site and under the conditions set out by the regulation referred to in Article 19(3) of Directive [2003/87], the information which the registry holder is required to make public;

...

II The [CDC] shall take the necessary measures to ensure the confidentiality of the information which it collects in the exercise of its duties and to prevent any use of that information, including within that body, in respect of activities other than those duties.

...

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

- 29 By letter of 7 February 2006, the Ville de Lyon requested the CDC to communicate to it the volumes of the greenhouse gas emission allowances ('the emission allowances') sold in 2005 by the operators of 209 urban heating sites situated throughout France to which emission allowances were allocated, and also the dates of the transactions and their recipients (together 'the trading data'). According to the Ville de Lyon, that data was useful to it for comparative purposes, for the renegotiation of an agreement delegating a public service in respect of urban heating at the La Duchère site in the municipality of Lyon.
- 30 By decision of 6 March 2006, the CDC refused to supply that information on the ground that paragraphs 11 and 12 of Annex XVI to Regulation No 2216/2004 and Article 10 thereof preclude its supply. The Ville de Lyon brought an action before the Commission d'accès aux documents administratifs (Committee on Access to Administrative Documents) (CADA), which issued an opinion in favour of the supply of the documents relating to the trading data.
- 31 However, by decision of 10 November 2006, the CDC reiterated its refusal to supply the information. In its view, as the administrator of the national registry, the trading data requested fell within the competence of the Central Administrator, who could supply that information only by placing it on the Internet after a five-year period had elapsed after completion of the transactions. Moreover, the provisions of Directive 2003/4 are not intended to govern the communication of that trading data in the context of the scheme for emission allowances, for which the EU legislature has laid down specific rules in Directive 2003/87 and Regulation No 2216/2004.

32 By application of 10 January 2007, the Ville de Lyon brought an action before the referring court, seeking, first, that the refusal decisions of 6 March and 10 November 2006 be set aside and, second, that the CDC be ordered to supply it with the documents relating to the trading data requested.

33 In those circumstances the Tribunal administratif de Paris decided to stay proceedings and refer the following questions to the Court for a preliminary ruling:

- '1. Is the supply or refusal to supply the information provided for in point 12 of Annex XVI to Regulation (EC) No 2216/2004 the responsibility of the Central Administrator alone or the responsibility also of the administrator of the national registry?
2. If it is the responsibility of the administrator of the national registry, must that information be considered to be "information on emissions into the environment" within the meaning of Article 4 of Directive 2003/4/EC, against whose supply "the confidentiality of commercial or industrial information" could not be invoked, or is the supply of that information governed by specific rules on confidentiality?
3. In the event that specific rules on confidentiality apply, is that information not to be supplied before a period of five years has elapsed or does that time-limit concern only the five-year allowance allocation period under Directive 2003/87/EC?
4. In the event that that five-year time-limit does apply, does Article 10 of Regulation No 2216/2004 allow a derogation from it and can a refusal to derogate from it be invoked, on the basis of that article, against a local authority requesting the supply of that information in order to negotiate an agreement on public service delegation in respect of urban heating?'

## **Consideration of the questions referred for a preliminary ruling**

### *The second question*

- 34 By its second question, which should be considered first, the referring court asks, in essence, whether the reporting of trading data, such as that requested in the main proceedings by the Ville de Lyon, is governed by one of the derogations provided for in Article 4 of Directive 2003/4 or by the provisions of Directive 2003/87 and Regulation No 2216/2004, adopted pursuant to that directive.
- 35 It should be noted as a preliminary point that, in adhering to the Aarhus Convention, the European Union undertook to ensure, within the scope of EU law, a general principle of access to environmental information held by the public authorities.
- 36 In adopting Directive 2003/4, the European Union intended to implement the Aarhus Convention by providing for a general scheme to ensure that any natural or legal person in a Member State of the European Union has a right of access to environmental information held by or on behalf of the public authorities, without that person having to show an interest.
- 37 In the scheme for emission allowance trading established in the European Union by Directive 2003/87, Article 17 thereof provides *inter alia* that decisions relating to the allocation of allowances to operators of installations authorised to emit greenhouse gases and the reports of emissions required under the greenhouse gas emissions permit and held by the competent authority are to be made available to the public in accordance with Directive 2003/4.
- 38 Although the EU legislature thus integrated, within the context of Directive 2003/87, requirements on public access to that type of information, it did not thereby intend to make the

reporting of all information or data having a connection with the implementation of Directive 2003/87 subject to the requirements of Directive 2003/4.

39 In that regard, it should be noted that the trading data requested by the Ville de Lyon does not come within the scope of Article 17 of Directive 2003/87, which refers to Directive 2003/4. That data is, however, referred to in Article 19 of Directive 2003/87, that is to say, data relating to transferred allowances, an accurate accounting of which is to be kept by the Member States in their respective national registries, of which the technical features and rules relating to the keeping, reporting and confidentiality of the information contained in those registries are determined by Regulation No 2216/2004.

40 Since Article 19 of Directive 2003/87 does not refer to Directive 2003/4 in the same way as in Article 17, it must be held that the EU legislature did not intend to make requests concerning trading data such as that at issue in the main proceedings subject to the general provisions of Directive 2003/4 but that, on the contrary, it sought to introduce, in respect of that data, a specific, exhaustive scheme for public reporting and confidentiality of that data.

41 The answer to the second question is therefore that a request for the reporting of trading data such as that requested in the main proceedings, relating to the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions, comes exclusively under the specific rules governing public reporting and confidentiality contained in Directive 2003/87 and in Regulation No 2216/2004.

*The third and fourth questions*

42 By its third and fourth questions, which should be considered

together, the referring court asks, in essence, first, whether the reporting of trading data such as that at issue in the main proceedings comes within the scope of the specific confidentiality rules laid down in Articles 9 and 10 of Regulation No 2216/2004. Second, that court asks whether the trading data concerning each completed transaction referred to in paragraphs 11 and 12 of Annex XVI to that regulation should be published after a five-year period has elapsed following completion of the transaction in question or whether information relating to all of the transactions effected during the course of a five-year allowance period for the purposes of Directive 2003/87 should be published at the end of that five-year period.

- 43 If that publication is to take place at the end of a five-year period following completion of the transaction in question, that court then wishes to know whether the renegotiation of an agreement on public service delegation such as that at issue in the main proceedings may be considered to be intended to implement the requirements of Regulation No 2216/2004, Directive 2003/87 or national law within the meaning of Article 10(1) of that regulation, which could result in the confidentiality no longer being able to prevent the reporting of the trading data requested.
- 44 As held in paragraph 41 of this judgment, trading data such as that requested by the Ville de Lyon concerning the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions come within the scope of Directive 2003/87 and Regulation No 2216/2004.
- 45 In that regard, Article 19(2) of Directive 2003/87 does indeed provide that such information is to be recorded in the national registries, that those registries are to be accessible to the public and to contain separate accounts to record the allowances held by each person to whom and from whom

allowances are issued or transferred. However, as Article 19(3) called on it to do, the Commission adopted Regulation No 2216/2004 relating to the standardised and secured system of registries, necessary for the implementation of that directive, by which the Commission inter alia laid down the rules for guaranteeing public access to the data recorded in that system and the confidentiality thereof as appropriate.

- 46 It is apparent from Article 9 of Regulation No 2216/2004 that the administrators of national registries, such as the CDC in France, and the Central Administrator, designated by the Commission, are to make available the information listed in Annex XVI at the frequencies and to the recipients set out in that annex in a transparent and organised manner via their registry website or the website of the Community independent transaction log.
- 47 Under Article 10(1) of Regulation No 2216/2004, all information, including data relating to transactions made, held in all registries, is to be considered confidential for any purpose other than the implementation of the requirements of that regulation, Directive 2003/87 or national law. Moreover, under Article 19(2), that information may not be used without the prior consent of the relevant account holder except to operate and maintain those registries.
- 48 It should be noted, first, that the renegotiation of an agreement on public service delegation by a public entity such as the Ville de Lyon is not, in principle, an activity implementing the requirements of Regulation No 2216/2004, Directive 2003/87 or national law.
- 49 Second, it is common ground that the Ville de Lyon is not the holder of an account and that, consequently, it does not have access, on the terms laid down in paragraphs 13 and 14 of Annex XVI to Regulation No 2216/2004, to information which may be displayed in the non-public area of the national registry in the event that the urban heating suppliers in the

main proceedings were to make a request.

- 50 It follows that, in circumstances such as those of the main proceedings and, in any event, in the absence of the prior consent of the relevant account holders, as required by Article 10(2) of Regulation No 2216/2004, to use of the information concerning them for purposes other than the operation and maintenance of the registries, information such as the trading data requested in the main proceedings must remain confidential, with the result that the Ville de Lyon may only claim access to information relating to transactions involving emission allowances on the same terms as for the general public, that is, free consultation, in accordance with paragraphs 5 and 6 of Annex XV to Regulation No 2216/2004, of the public area of the Community independent transaction log's website and the public area of the websites of the national registries, which are distinct from the databases of that log and those registries.
- 51 Regarding the frequency with which information such as that at issue in the main proceedings is put online in the public area, the referring court asks whether it is possible to align that frequency with the periods covered by the national allowance plans, namely, in the main proceedings, the periods from 1 January 2005 to 31 December 2007 and from 1 January 2008 to 31 December 2012, which would mean that the information relating to transactions on allowances attributed under a national allocation plan would be accessible to the public immediately at the end of those periods, namely, in 2008 in the first case and in 2013 in the second.
- 52 In that regard, it suffices to find that paragraphs 11 and 12 of Annex XVI to Regulation No 2216/2004 do not provide for such an alignment. It is explicitly clear from those paragraphs and from paragraph 12(c) to (e) and (g) that data such as that requested in the main proceedings concerning the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved

in those transactions and the date and time of those transactions, are to be placed online in the public area of the Community independent transaction log's website by the Central Administrator from 15 January onwards of the fifth year (X+5) following the year (X) of completion of the transactions concerned.

- 53 The answer to the third and fourth questions is therefore that trading data such as that requested in the main proceedings by a public authority wishing to renegotiate an agreement on public service delegation is confidential data within the meaning of Regulation No 2216/2004 and that, under Articles 9 and 10 of that regulation, read in conjunction with paragraphs 11 and 12 of Annex XVI to that regulation, such data, in the absence of the prior consent of the relevant account holders, may be freely consulted by the general public only in the public area of the Community independent transaction log's website from 15 January onwards of the fifth year (X+5) following the year (X) of completion of the transactions relating to transfers of emission allowances.

*The first question*

- 54 By its first question, the referring court asks, in essence, whether, when a request in that regard is submitted to it, the administrator of the national registry, through which data such as that at issue in the main proceedings passes and the reporting of which is the responsibility of the Central Administrator, has authority independently to refuse such reporting.
- 55 As held in paragraph 52 of this judgment, in the scheme provided for by Regulation No 2216/2004, in particular paragraphs 11 and 12 of Annex XVI thereto, it is expressly provided that data concerning the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions, are

to be made available to the general public by being placed online in the public area of the Community independent transaction log's website and that, in that regard, the Central Administrator has sole competence to carry out such reporting.

- 56 Such placing online is to be effected from 15 January onwards of the fifth year (X+5) following the year (X) of completion of the transactions effecting transfer of the emission allowances, the date from which the trading data ceases to benefit from the confidentiality scheme established by the EU legislature.
- 57 Consequently, if a request addressed to an administrator of a national registry relates to the reporting of information concerning the names of holders established within the national territory of that administrator, transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions, that administrator is required, in the absence of the prior consent of the relevant account holders, to guarantee the confidentiality owed such information until it has been legally reported to the general public by the Central Administrator. In such a situation, it is for the administrator of the national registry himself to reject the reporting request thus addressed to him.
- 58 If, on the other hand, that information has already been placed online by the Central Administrator, in accordance with paragraphs 11 and 12 of Annex XVI to Regulation No 2216/2004, in the public area of the Community independent transaction log's website, the administrator of the national registry has authority to report such information to the requesting party or to indicate the website where such information is legally available.
- 59 The answer to the first question is therefore that although, for the purposes of implementation of Regulation No 2216/2004,

it is the Central Administrator who has sole competence to report to the general public the data referred to in paragraph 12 of Annex XVI to that regulation, the administrator of the national registry who has received a request for reporting of such trading data must independently reject that request since, in the absence of the prior consent of the relevant account holders, that administrator is required to guarantee the confidentiality of that data until it has become legally reportable to the general public by the Central Administrator.

### **Costs**

- 60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

- 1. A request for the reporting of trading data such as that requested in the main proceedings, relating to the names of holders of the transferring accounts and acquiring accounts of the emission allowances, allowances or Kyoto units involved in those transactions and the date and time of those transactions, comes exclusively under the specific rules governing public reporting and confidentiality contained in Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, in the version resulting from Directive 2004/101/EC of the European Parliament and of the Council of 27 October 2004, and in Commission Regulation (EC) No 2216/2004 of 21 December 2004 for a standardised and secured system of registries**

**pursuant to Directive 2003/87 and Decision No 280/2004/EC of the European Parliament and of the Council.**

- 2. Trading data such as that requested in the main proceedings by a public authority wishing to renegotiate an agreement on public service delegation is confidential data within the meaning of Regulation No 2216/2004 and, under Articles 9 and 10 of that regulation, read in conjunction with paragraphs 11 and 12 of Annex XVI to that regulation, such data, in the absence of the prior consent of the relevant account holders, may be freely consulted by the general public only in the public area of the Community independent transaction log's website from 15 January onwards of the fifth year (X+5) following the year (X) of completion of the transactions relating to transfers of emission allowances.**
  
- 3. Although, for the purposes of implementation of Regulation No 2216/2004, it is the Central Administrator who has sole competence to report to the general public the data referred to in paragraph 12 of Annex XVI to that regulation, the administrator of the national registry who has received a request for reporting of such trading data must independently reject that request since, in the absence of the prior consent of the relevant account holders, that administrator is required to guarantee the confidentiality of that data until it has become legally reportable to the general public by the Central Administrator.**

[Signatures]