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OPINION OF ADVOCATE GENERAL
BOBEK
delivered on 23 May 2019 [1]

**Case C-239/18**

**Saatgut-Treuhandverwaltungs GmbH**
**v**
**Freistaat Thüringen**

(Request for a preliminary ruling from the Thüringer Oberlandesgericht (Higher Regional Court of Thuringia, Germany))

(Reference for a preliminary ruling — Plant varieties — System of protection — Article 14(3) of Regulation (EC) No 2100/94 and Article 11 of Regulation (EC) No 1768/95 — Use by farmers of the product of the harvest — Official bodies involved in the monitoring of agricultural production — Concept — Obligation to provide information to the holder of the Community right — Scope — Content of the request for information — Species or varieties — Exceptions to the duty to provide information — Additional burden or costs entailed in retrieving information from a database)

1 Original language: English.

## I. Introduction

1. Saatgut-Treuhandverwaltungs GmbH ('the Appellant') represents a number of seed-breeding undertakings that hold plant variety rights. Under EU law, varieties of botanical genera and species may form the object of Community plant variety rights. Holders of those intellectual property rights are to receive remuneration as compensation for the use of the protected varieties. To that effect, holders of varieties are entitled to request and receive certain information from farmers, processors, or official bodies involved in the monitoring of agricultural production in order to enforce their right to remuneration.

2. In the judgments in *Schulin* [2] and *Brangewitz*, [3] the Court addressed the issue of the type and scope of the information that holders of protected varieties could request from farmers and processors, respectively. In the present case, the Court is asked to complement the picture with regard to requests made by holders to *official bodies*: to what extent can a holder of a protected variety obtain (what type of) information from (which) official bodies in order to exercise its right to remuneration?

## II. EU legal framework

### A. The Basic Regulation

3. Article 5(2) of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights [4] ('the Basic Regulation') is worded as follows:

'For the purpose of this Regulation, "variety" shall be taken to mean a plant grouping within a single botanical taxon of the lowest known rank …'

4. By virtue of Article 13(2), 'without prejudice to the provisions of Articles 15 and 16, the following acts in respect of variety constituents, or harvested material of the protected variety, both referred to hereinafter as "material", shall require the authorisation of the holder: (a) production or reproduction (multiplication); …'.

5. Article 14 of the Basic Regulation is entitled 'Derogation from Community plant variety right'. It provides in paragraph 1 that 'notwithstanding Article 13(2), and for the purposes of safeguarding agricultural production, farmers are authorised to use for propagating purposes in the field, on their own holding the product of the harvest which they have obtained by planting, on their own

2 Judgment of 10 April 2003 (C-305/00, EU:C:2003:218).

3 Judgment of 14 October 2004 (C-336/02, EU:C:2004:622).

4 OJ 1994 L 227, p. 1.

holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant variety right'.

6. Article 14(2) of the Basic Regulation specifies that the provisions of paragraph 1 shall only apply to the agricultural plant species that it lists.

7. The key provision, Article 14(3), is worded as follows:

'Conditions to give effect to the derogation provided for in paragraph 1 and to safeguard the legitimate interests of the breeder and of the farmer, shall be established, before the entry into force of this Regulation, in implementing rules pursuant to Article 114, on the basis of the following criteria:

- there shall be no quantitative restriction of the level of the farmer's holding to the extent necessary for the requirements of the holding,

- the product of the harvest may be processed for planting, either by the farmer himself or through services supplied to him, without prejudice to certain restrictions which Member States may establish regarding the organisation of the processing of the said product of the harvest, in particular in order to ensure identity of the product entered for processing with that resulting from processing,

- small farmers shall not be required to pay any remuneration to the holder; small farmers shall be considered to be:

    - in the case of those of the plant species referred to in paragraph 2 of this Article to which Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops [(OJ 1992 L 181, p. 12)] applies, farmers who do not grow plants on an area bigger than the area which would be needed to produce 92 tonnes of cereals; for the calculation of the area, Article 8(2) of the aforesaid Regulation shall apply,

    - in the case of other plant species referred to in paragraph 2 of this Article, farmers who meet comparable appropriate criteria,

- other farmers shall be required to pay an equitable remuneration to the holder, which shall be sensibly lower than the amount charged for the licensed production of propagating material of the same variety in the same area; the actual level of this equitable remuneration may be subject to variation over time, taking into account the extent to which use will be made of the derogation provided for in paragraph 1 in respect of the variety concerned,

- monitoring compliance with the provisions of this Article or the provisions adopted pursuant to this Article shall be a matter of exclusive responsibility of holders; in organising that monitoring, they may not provide for assistance from official bodies,

– relevant information shall be provided to the holders on their request, by farmers and by suppliers of processing services; relevant information may equally be provided by official bodies involved in the monitoring of agricultural production, if such information has been obtained through ordinary performance of their tasks, without additional burden or costs. These provisions are without prejudice, in respect of personal data, to Community and national legislation on the protection of individuals with regard to the processing and free movement of personal data.'

## B. The Implementing Regulation

8. Article 11 of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights [5] ('the Implementing Regulation') provides that:

'1. A request for information on the actual use of material, by planting, of specific species or varieties, or on the results of such use, which a holder addresses to an official body, must be made in writing. In this request, the holder shall specify his name and address, the variety or varieties in respect of which he is interested in information and the type of information he seeks. He also shall provide evidence for his holdership.

2. The official body may, without prejudice to the provisions of Article 12, withhold the requested information only, if

- it is not involved in the monitoring of agricultural production, or

- it is not allowed, under Community rules or rules of Member States governing the general discretion applicable in respect of activities of official bodies, to provide such information to holders, or

- it is under its discretion, pursuant to the Community legislation or the legislation of Member States under which the information has been collected, to withhold such information, or

- the requested information is not or no longer available, or

- such information cannot be obtained through ordinary performance of the tasks of the official body, or

- such information can only be obtained with additional burden or costs, or

- such information relates specifically to material which does not belong to varieties of the holder.

5 OJ 1995 L 173, p. 14.

The official bodies concerned shall inform the Commission on the manner in which they exercise the discretion referred to in the third indent above.

3. In providing the information, the official body shall not differentiate between holders. The official body may provide the requested information in making copies available to the holder, which have been produced from documents containing information additional to that relating to material belonging to varieties of the holder, provided that it is ensured that any possibility to identify individuals protected under the provisions referred to in Article 12 has been removed.

4. If the official body takes the decision to withhold the requested information, it shall inform the requesting holder thereof in writing and indicate the reason for this decision.'

## III. Facts, procedure and the questions referred

9. The Appellant is a German company engaged in trust management, acting on behalf of mainly German seed-breeding undertakings. [6] Those undertakings are plant variety right holders and/or proprietors of exclusive rights of use in protected varieties for agricultural use in Germany. They have entrusted the Appellant with the task of enforcing, in its own name, the right to remuneration that holders derive from the cultivation of protected plant varieties.

10. Freistaat Thüringen ('the Respondent'), represented through its Landesverwaltungsamt (Administrative Office), is responsible for monitoring EU funds, in the context of the administration and supervision of grants from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD), pursuant to Article 7 of Regulation (EU) No 1306/2013 [7] and Article 1 of Delegated Regulation (EU) No 907/2014 [8] (in conjunction with Annex I.1.A. thereto).

11. According to the referring court, in connection with subsidies from EU funds and the related monitoring of compliance with funding rules, the Respondent stores data in the Integriertes Verwaltungs- und Kontrollsystem (integrated administration and supervision system; 'InVeKoS') database. That

6 It appears from the national file submitted to the Court that the Appellant represents over 50 breeders, most of which are undertakings based in Germany, while several of them are based in Denmark, France, the Netherlands and Poland.

7 Regulation of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008 (OJ 2013, L 347, p. 549).

8 Commission Delegated Regulation of 11 March 2014 supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to paying agencies and other bodies, financial management, clearance of accounts, securities and use of euro (OJ 2014 L 255, p. 18).

database contains data regarding the active agricultural holdings within the Respondent's territory, in particular the information provided by farmers making funding requests. Information as to the plant species used is apparently available in that database for the purpose of ensuring compliance with rules relating to crop rotation.

12. By letter of 5 April 2016, the Appellant requested the transmission of a certain set of data saved in the InVeKoS database. The Respondent refused to disclose that data, basing its refusal on Paragraph 9(1) of the Thüringer Informationsfreiheitsgesetz (Law of Thuringia on freedom of information; 'the ThürIFG').

13. On 23 December 2016, the Appellant brought the present action seeking to assert a right to the information before the Landgericht Erfurt (Regional Court, Erfurt, Germany). The Appellant requested that the Respondent be ordered to provide it with the following information stored in the database:

- the names and addresses of the agricultural holdings;

- in hectares, the areas of each holding on which plants are grown;

- in hectares, the areas on which cereals and potatoes are cultivated.

14. The Appellant argued that it had a right to obtain information from the Respondent under Article 11(1) of the Implementing Regulation, which also applied to plant species. As an official body involved in monitoring agricultural production, the Respondent had no right to withhold the requested information that was in its possession and which could be shared without any significant additional burden or costs. In the Appellant's view, no provisions of national law allowed the Respondent to withhold the information. In particular, Paragraph 9(1) of the ThürIFG was not applicable. Rather, the balancing of interests provided for under Paragraph 9(2) of the ThürIFG leaned in favour of the Appellant's interest in obtaining the information.

15. The Respondent contended that the action should be dismissed since its decision to withhold the information was justified. It was not in any way an official body within the meaning of Article 11(1) of the Implementing Regulation and, in any event, that provision set out a right to information only in relation to varieties. Furthermore, in addition to the right to withhold information that stems from the ThürIFG, there is also a right to withhold information on account of the fact that gathering the requested information would entail an additional burden and costs.

16. By a judgment of 17 August 2017, the Landgericht Erfurt (Regional Court, Erfurt) dismissed the action. It found that the Respondent had been justified in withholding the information under the second and third indents of Article 11(2) of the Implementing Regulation, in conjunction with Article 12 thereof.

17. The Appellant lodged an appeal against that decision before the Thüringer Oberlandesgericht (Higher Regional Court of Thuringia, Germany), the referring court.

18. By its appeal, the Appellant claims a right to information from the Respondent based on Article 11(1) of the Implementing Regulation and that the right to information from official bodies does not relate only to varieties. It is for the Appellant to determine the purpose for which it will use the information. In particular, the information held by the Respondent would provide the Appellant with an insight into the size of the areas which are actually under cultivation by farmers as well as information on who falls within the 'small farmer' category. In that way, it will be able to avoid having to request that information from small farmers themselves. The Appellant has pledged to repay to the Respondent any costs that might arise from the search of the requested data, such as costs associated with software programming.

19. According to the Respondent, the Landgericht Erfurt (Regional Court, Erfurt) correctly held that the Appellant's right to information is restricted under the second and third indents of Article 11(2) of the Implementing Regulation. The InVeKoS database does not contain any information relating to specific varieties, with the exception of information relating to hemp and hops, because the farmers who apply for subsidies do not have to provide such information. Furthermore, the Respondent does not have its own programming capabilities in relation to the new, specific search which would be necessary in order to compile the requested data. The employment of a service provider for that programming work would give rise to costs of EUR 6 000.

20. It is within this factual and legal context that the Thüringer Oberlandesgericht (Higher Regional Court of Thuringia) decided to stay the proceedings and refer the following questions to the Court of Justice:

'(1) Does a right to information from official bodies under Article 11(1) of [Regulation No 1768/95] exist in a situation where a request relates solely to information concerning species of plants, without the request for information also seeking information on a protected variety?

(2) If the answer to Question 1 is that such a right to information can exist:

(a) Is a body which monitors subsidies for farmers from EU funds and, in that respect, stores data which relate to (plant) species obtained from farmers who apply for those subsidies to be regarded as an official body involved in the monitoring of agricultural production within the meaning of the first indent of Article 11(2) of [Regulation No 1768/95]?

(b) Is an official body justified in withholding the requested information if the provision of that information requires the data which it holds to be processed and catalogued by a third party and if doing so would

require financial expense in the region of EUR 6 000? In that regard, is it relevant whether the person making the request is prepared to meet the costs incurred?'

21. Written submissions were lodged by the Appellant, the Respondent, the Spanish Government and the European Commission. They all presented observations at the hearing that took place on 31 January 2019.

## IV. Assessment

22. The present Opinion is structured as follows. I will start with preliminary clarifications regarding the scheme and overall functioning of the system of Community plant variety rights, in particular as regards the derogation laid down in Article 14(3) of the Basic Regulation (A). I shall then turn to Question 1 concerning the issue of the kind of information that can be requested from official bodies by holders of protected varieties under Article 11 of the Implementing Regulation (B). Finally, I shall turn to Question 2, dealing with the concept of an 'official body involved in the monitoring of agricultural production' and the issue of whether the competent official bodies may withhold the requested information when providing such information requires further processing, concluding with the issue of potential additional costs (C).

### A. The agricultural exemption under Article 14(3) of the Basic Regulation

23. Article 13 of the Basic Regulation sets out the rights of the holder of a Community plant variety right. Under Article 13(2), the authorisation of the holder is, in principle, required for the production or reproduction (multiplication) of variety constituents, or harvested material of the protected variety (both referred to as 'material').

24. Article 14 of the Basic Regulation provides for a derogation from the requirement to obtain the holder's authorisation ('the agricultural exemption'). By virtue of Article 14(1), for the purposes of safeguarding agricultural production, farmers are authorised to use for propagating purposes in the field, on their own holding, the product of the harvest which they have obtained by planting, on their own holding, propagating material of a variety other than a hybrid or synthetic variety, which is covered by a Community plant right. Article 14(2) limits the scope of the exemption to the agricultural plant species enumerated therein. Article 14(3) provides for implementing rules in order to establish the conditions to give effect to that agricultural exemption. It also sets out the criteria that any implementing rules should follow.

25. By the Implementing Regulation, the Commission has given shape to the agricultural exemption with a view to safeguarding the legitimate interests of both the breeder, represented by the holder, and the farmer. When a farmer makes use of the agricultural exemption, the holder has the right to receive an 'equitable

remuneration' from him. Under Article 5(1) of the Implementing Regulation, the level of the equitable remuneration 'may form the object of a contract between the holder and the farmer concerned'. Where no contract has been concluded between the holder and the farmer concerned, Article 5(2) of the Implementing Regulation states that 'the level of the remuneration shall be sensibly lower than the amount charged for the licensed production of propagating material of the lowest category qualified for official certification, of the same variety in the same area'.

26. Small farmers making use of the agricultural exemption do not have to pay *any* remuneration to the holder. Article 14(3), third indent, of the Basic Regulation defines small farmers as farmers who do not grow plants on an area bigger than the area which would be needed to produce 92 tonnes of cereals or who meet comparable appropriate criteria, depending on the plant species.

27. Within a system designed in this way, knowledge of *who* relied on the agricultural exemption is paramount in order for the holders to be able to enforce their intellectual property rights and receive the (equitable) remuneration to which they are entitled. Accordingly, the Implementing Regulation contains a number of provisions allowing the holders to obtain information from several relevant actors. Although the Court has already interpreted, in cases also involving the Appellant, those provisions pertaining to information to be provided by farmers and processors, [9] the present case specifically concerns the kind of information that certain official bodies are to provide to the holders.

## B. Question 1: the scope of the holders' right to information vis-à-vis official bodies under Article 11 of the Implementing Regulation

28. By Question 1, the referring court essentially enquires into the kind of information that must be provided, under Article 11 of the Implementing Regulation, by an official body upon a request from a holder: is the holder entitled to obtain information in relation to *species* of plants or only as regards specific *varieties* of the holder?

29. According to the Appellant, Article 14(3), sixth indent, of the Basic Regulation, together with Article 11(1) of the Implementing Regulation, grants holders a right to obtain information from official bodies in relation to species, without it being necessary that the request for information relates to a specific variety. In particular, holders are entitled to obtain information identifying 'small farmers', within the meaning of Article 14(3), third indent, of the Basic Regulation, who are fully exempted from the obligation to remunerate holders. Knowing whether a farmer is a small farmer would enable the holder not to seek information, and a fortiori payment, from those small farmers. However, small

9 Judgments of 10 April 2003, *Schulin* (C-305/00, EU:C:2003:218); of 11 March 2004, *Saatgut-Treuhandverwaltungsgesellschaft* (C-182/01, EU:C:2004:135); of 14 October 2004, *Brangewitz* (C-336/02, EU:C:2004:622); and of 15 November 2012, *Raiffeisen-Waren-Zentrale Rhein-Main* (C-56/11, EU:C:2012:713).

farmers are not themselves defined in connection with a specific variety, but in connection with the surface cultivated with certain plant *species*. In any event, the Appellant submits that the duty to provide information that is incumbent on the official body is broader than that of farmers since Article 11 does not specify the 'relevant' information to be provided.

30. According to the Commission, the right to information under Article 11(1) of the Implementing Regulation is not limited to varieties. It can include species in order to ascertain which farmers are small farmers. However, the object of the request for information must be a variety. Thus, holders cannot make general, broad requests for information to official bodies without providing indications as to whether farmers have actually acquired multiplication material of protected varieties. The Commission also notes that the request for information from official bodies does not pertain to an autonomous public right to access documents or to reuse public sector data (under Directive 2003/98/EC [10]). It is only a private right, ancillary to the relationship between holders and farmers.

31. For their part, the Respondent and the Spanish Government argue that requests for information to official bodies must relate to specific varieties, as opposed to species. Article 11(1) of the Implementing Regulation, read in the light of Article 14(3) of the Basic Regulation, cannot be relied on to obtain general information about farmers.

### *1. The scope of access to information held by official bodies under Article 11 of the Implementing Regulation*

32. An initial clarification is necessary at the outset concerning the relationship between the specific provisions of Article 11 of the Implementing Regulation and Article 14(3), third indent, of the Basic Regulation, as well as national rules on access to information.

33. The referring court specifically seeks an interpretation of the scope of access to information *under Article 11 of the Implementing Regulation*. According to the Appellant, that provision is a valid legal basis for obtaining, inter alia, information enabling it to identify 'small farmers' that are exempt from the payment of any remuneration and who, as a consequence, should not receive requests for information from holders.

34. Article 11 of the Implementing Regulation is a specific provision of an implementing act dedicated to the agricultural exemption set out in Article 14(3) of the Basic Regulation. Logically, therefore, there must be a correlation between the ambit of Article 14(3) of the Basic Regulation and the scope of Article 11 of the Implementing Regulation. What is more, an implementing regulation must respect the scope and limits of the basis upon which it was adopted.

10 Directive of the European Parliament and of the Council of 17 November 2003 on the reuse of public sector information (OJ 2003 L 345, p. 90).

35. It is indeed true that Article 14(3), third indent, of the Basic Regulation mentions, by way of an exception to an exception, small farmers. However, the Implementing Regulation itself is not concerned with that category, certainly as far as access to information held by the official bodies is concerned. Article 11 does not refer to small farmers. Within the Implementing Regulation, small farmers are only mentioned in Article 7, in the chapter on remuneration. That provision further defines, for the purposes of identifying small farmers, 'an area on which plants are grown' within the meaning of Article 14(3), third indent, of the Basic Regulation. [11] However, it does not lay down a duty for farmers, processors or official bodies to provide general information on the size of such areas to holders.

36. Whether, within such a context, the word 'species' contained in the first sentence of Article 11(1) of the Implementing Regulation should be read as referring to Article 14(3), third indent, of the Basic Regulation will be examined in the following section. Two systemic remarks are called for at this stage.

37. First, even if general information on the size of the areas cultivated bears some relevance for the exercise of the holder's right to remuneration, it still does not enable the holder to enforce claims relating to its varieties. The logic of both regulations starts with the use of varieties, to which small-farmer status then constitutes a kind of 'defence'. It is not the other way round. Rather, it must be established, in the first place, as a preliminary piece of information, whether farmers have used or intended to use the product of the harvest obtained by planting the material of specific *varieties*. The exception relating to small farmers, contained in Article 14(3), third indent, of the Basic Regulation, may play a role only later on, as a line of defence for those farmers meeting the requirements to that effect, *within* the larger pool of farmers cultivating the protected varieties falling within the scope of Article 14(1) of the Basic Regulation.

38. Second, however, even if the systemic connection between Article 14(3), third indent, of the Basic Regulation, and Article 11 of the Implementing Regulation was not necessary as a matter of EU law, it is important to underline that, at the same time, Article 11 of the Implementing Regulation can in no way be construed as exhaustively covering the ground as far as potential information requests to national bodies are concerned.

39. Member States are not indeed precluded from granting access to types of information that do not fall under Article 11. The silence of EU law on access to certain information cannot be interpreted as EU law 'banning access', but rather the contrary: unless precluded by EU law, the residual *national* rules on access to information remain applicable to any and all of the issues not expressly covered by EU law. The fact that the Implementing Regulation does not contain specific

[11] See also the sixth recital of the Implementing Regulation, which states that the Commission will monitor the effects which the definition of 'small farmers' may produce with regard to the role of the remuneration.

provisions regarding access to information enabling a holder to identify small farmers means that the matter simply falls under the national rules.

40. In the circumstances of the present case, it would appear that the Appellant's initial request was made (and rejected) under the ThürIFG. It is certainly not for the Court to make findings and assessments as to fact in the case before it or to interpret and apply national law. However, it must be stressed that requests for information unrelated to specific varieties can certainly be submitted — and that information can be obtained — by the holders on the basis of national law, if national law so permits. If the information that the holders would like to obtain is in the possession of national (public) authorities and primarily relates to administrative information assembled by national authorities, national rules on access to information apply. [12]

41. I wish to stress that point in order to make clear that Article 11 of the Implementing Regulation cannot, at the same time, be construed both narrowly and exclusively: narrowly, since it would be construed as not including species, and exclusively, because it would exhaustively cover the matter, thus effectively precluding any simultaneous application of national rules on access to information.

42. For the reasons that I explain in the following section, I am bound to agree with the Respondent on the first point: the information requests that can be addressed to official bodies under Article 11 of the Implementing Regulation indeed relate to varieties of the holder making the request. However, excluding information relating to species from the scope of Article 11 necessarily means that that 'space' remains occupied by national law, and interested holders may submit requests relating to species under national law.

### *2. The scope of Article 11 — varieties or species?*

43. Two textual arguments might suggest that requests for information generally refer to *species*.

44. First, Article 11(1), first sentence, of the Implementing Regulation indeed explicitly mentions 'species': 'a request for information on the actual use of material, by planting, of specific *species* or varieties, or on the results of such use which a holder addresses to an official body, must be made in writing' (my emphasis).

45. Second, on the hypothesis that Article 11 of the Implementing Regulation was also intended to implement Article 14(3), third indent, of the Basic Regulation, the latter provision defines 'small farmers' with regard to the size of the area where the plant *species* listed in Article 14(2) are cultivated.

12 See, for example, my Opinion in *Buccioni* (C-594/16, EU:C:2018:425, point 32).

46. For these reasons, the mention of 'species' in Article 11(1) of the Implementing Regulation could be interpreted as allowing for requests for information regarding the surface of land on which those species were cultivated, for the purposes of identifying 'small farmers'.

47. However, apart from those two textual arguments, there is very little in terms of legal argument to support the interpretation of Article 11 of the Implementing Regulation advocated by the Appellant. Further textual, but above all systemic and purposive, interpretation of that provision clearly suggests that requests for information that are filed with official bodies by holders are supposed to be concerned with specific plant *varieties* of the holder making the request.

48. To start with, and remaining at the *textual* level, Article 11(1), second and third sentences, of the Implementing Regulation, set out specific requirements that a valid request for information must meet. Among these requirements, the holder shall specify '*the variety or varieties* in respect of which he is interested in information' and 'provide evidence for his holdership' (my emphasis). Since, according to Article 5(1) of the Basic Regulation, only *varieties* of botanical genera and species — and not species in general — may properly form the object of Community plant *variety* rights, it follows rather clearly from Article 11(1) that requests for information must be tailored to varieties.

49. That conclusion is further confirmed by the text of Article 11(2), seventh indent, of the Implementing Regulation pursuant to which official bodies may withhold the requested information 'if such information relates specifically to material which does not belong to *varieties* of the holder' (my emphasis). It would be somewhat bizarre to argue that Article 11(1) of the Implementing Regulation allows holders to request and obtain information relating to species, while subsequent provisions of that same Article 11 permit such information to be (immediately) withheld.

50. It is settled case-law that, in interpreting a provision of EU law, it is necessary to have recourse not only to its wording but also to the context in which it is used, taking into account the scheme and objectives pursued by the rules of which it is part. [13] In the present case, a purposive and systemic interpretation also clearly pleads in favour of requests for information concerning specific *varieties*.

51. The purpose of the agricultural exemption is twofold: to safeguard agricultural production, while ensuring the payment, by the farmer, of an (equitable) remuneration to the holder. Article 2 of the Implementing Regulation stresses the need to maintain a reasonable balance between the interests of the farmer and the interests of the holder when the farmer has made use of the product of the harvest belonging to one or more varieties of the holder for planting in the

13 See, for example, judgments of 12 October 2017, *Kamin und Grill Shop* (C-289/16, EU:C:2017:758, paragraph 22), and of 19 October 2017, *Vion Livestock* (C-383/16, EU:C:2017:783, paragraph 35 and the case-law cited).

field(s) of his holding. It follows from the fact that the interests of the holder are affected by the use of its *varieties* by the farmer that the holder needs, in order to protect its own interests, specific information in relation to the *varieties* falling within the scope of the agricultural exemption, namely protected varieties, other than a hybrid or synthetic variety, [14] within the plant species set out in Article 14(2) of the Basic Regulation.

52. As to the general scheme relating to information, set out in both the Basic Regulation and the Implementing Regulation, Article 11 of the Implementing Regulation is to be examined together with Articles 8 and 9 thereof, as interpreted by the Court.

53. It is not only official bodies that must provide information to the holder under Article 11 of the Implementing Regulation, as follows from Article 14(3), sixth indent, of the Basic Regulation. Article 11 of the Implementing Regulation is only one of the provisions in Chapter 4. Within that chapter, which is dedicated to information, Articles 8 and 9 lay down rules on the information to be provided to the holder by, respectively, the farmer and the processor. Both provisions make clear that the information to be provided by both farmers and processors also relates to *varieties*, not species. In addition, according to Article 8(4) and Article 9(4) of the Implementing Regulation, the holder shall specify, in its request for information, 'the variety or varieties in respect of which he is interested in information, as well as the reference or references to the relevant Community plant variety right or rights'. If required by the farmer or the processor, 'evidence for holdership shall be provided'.

54. On their face, those provisions are already quite clear in so far as, in principle, only information relating to varieties can be requested and obtained by the holder from farmers or processors. The Court has even gone a step further by interpreting those provisions rather strictly in its judgments in *Schulin* and *Brangewitz*. [15]

55. In *Schulin*, the Court held that the holder must be authorised to request information from a farmer *where he has some indication* that the farmer has relied or will rely on the derogation provided for in Article 14(1) of the Basic Regulation, [16] and thus has used or will use, for propagating purposes in the field, on his own holding, the product of the harvest obtained by planting, on his own holding, propagating material *of a variety* other than a hybrid or synthetic variety which is covered by that right and belongs to one of the agricultural plant species listed in Article 14(2) of the Basic Regulation. [17] Thus, requiring all farmers,

14 This restriction follows from Article 14(1) of the Basic Regulation.

15 Judgments of 10 April 2003, *Schulin* (C-305/00, EU:C:2003:218), and of 14 October 2004, *Brangewitz* (C-336/02, EU:C:2004:622).

16 Judgment of 10 April 2003 (C-305/00, EU:C:2003:218, paragraph 63).

17 Ibid. Paragraph 72.

merely by belonging to that profession, even those who have never planted propagating material from a variety covered by a Community plant variety right belonging to one of the plant species listed in Article 14(2), to provide the holder with all relevant information on request would be contrary to EU law. [18]

56. The Court essentially provided the same answer with regard to processors in *Brangewitz*, albeit in a slightly more open way in order, presumably, to take into account the specificity of processors, compared to farmers. It held that Article 14(3) of the Basic Regulation, in conjunction with Article 9 of the Implementing Regulation, must be interpreted as meaning that, where the holder has some indication that the supplier of processing services has processed or intends to process the product of the harvest obtained by the farmer by planting propagating material of a variety of the holder subject to the privilege for planting, the processor is required to provide him with the relevant information relating, *not only* to the farmers for whom the holder has some indication that the processor has provided or intends to provide such services, *but also* to all other farmers for whom he has processed or intends to process the product of the harvest obtained by planting propagating material of the variety concerned, where that variety has been declared or is otherwise known to him. [19]

57. Against this background, it is rather difficult to see why official bodies should, within the operation of the same system, be subject to a much broader duty to provide information, which would even be of a different kind (having regard to the type of information to be provided).

58. That is particularly the case for a significant systemic reason: within the general scheme laid down by the Basic and Implementing Regulations, the task of providing the relevant information to holders so that they can exercise their right to remuneration does not appear to fall primarily to official bodies. [20]

59. First, Article 14(3), fifth and sixth indents, of the Basic Regulation seem to create a hierarchy between the addressees of holders' requests for information. That provision states in rather categorical terms that monitoring compliance with the rules pertaining to the agricultural exemption shall be a matter of exclusive responsibility of holders and they may not provide for assistance from official bodies. Holders are to obtain information primarily from farmers and suppliers of processing services, and secondarily from official bodies. [21]

18 Ibid. Paragraph 57.

19 Judgment of 14 October 2004 (C-336/02, EU:C:2004:622, paragraphs 65 to 66).

20 But not only there — the same logic is repeated and underlined in Article 16(1) of the Implementing Regulation.

21 It also follows from those provisions that while, generally, relevant information *shall* be provided by farmers and processors, it *may* be provided by certain official bodies, subject to a number of conditions.

60. The Court has already underlined that, because Regulation No 1768/95 is an implementing regulation laying down conditions to give effect to the derogation provided for in Article 14(1) of the Basic Regulation, its provisions cannot impose more extensive obligations than those under the Basic Regulation. [22]

61. The problem with embracing the interpretation proposed by the Appellant (and also partly by the Commission) is that it would amount to turning the logic and system of the Basic Regulation on its head through a very expansionist interpretation of the Implementing Regulation: the official authorities would then effectively become the default port of call for any information requests, both those relating to varieties as well as species. As will be discussed in the following section of this Opinion, I do not deny that such an approach might make good sense in terms of alleviating the administrative burden on individual farmers and decreasing the overall paperwork for everybody concerned. However, there is no disguising the fact that such an endeavour could hardly be treated as a matter of simple interpretation of a discrete provision of the Implementing Regulation.

62. Second, when compared to Articles 8 and 9 of the Implementing Regulation, Article 11 appears to be more restricted in scope since the second paragraph thereof lays down several exceptions to the duty of official bodies to provide information, the potential ambit of some of those exceptions being very wide. In particular, Article 11(2), second and third indents, defer to national law in quite a sweeping way: official bodies may simply refuse to provide the requested information if national law governing the discretion applicable in respect of activities of official bodies precludes it. It follows that the scope of the duty of official bodies to provide information would appear to be narrower when compared to that of farmers or processors. Hence, again in systemic terms, it is difficult to interpret the scope of the duty to provide information that is incumbent on official bodies in a more expansive manner than the corresponding duty incumbent on farmers and processors.

63. It follows that, as the EU legislation currently stands, Article 11(1) of the Implementing Regulation is to be interpreted as requiring requests for information to official bodies to be formulated with regard to specific protected *varieties* of the holder in question. However, that provision does not prevent Member States from providing for access to information from official bodies regarding *species* under national legislation on access to information.

### *3. The operation and the operability of the system*

64. To my mind, the strongest arguments presented by the Appellant, and to some extent also by the Commission, in favour of including the information on

22 That statement was made in the judgment of 10 April 2003, *Schulin* (C-305/00, EU:C:2003:218, paragraph 60), as regards farmers, and in the judgment of 14 October 2004, *Brangewitz* (C-336/02, EU:C:2004:622, paragraph 48), as regards processors.

species within the scope of Article 11 of the Implementing Regulation are of an extra-legal nature. They concern the practical operation (or, rather, the non-operation) of the system put in place by the Implementing Regulation.

65. The Appellant claims that the provision by official bodies of information allowing the identification of small farmers would make the procedure for exercising the right to remuneration more efficient and less burdensome and costly for all the actors concerned. For its part, in suggesting an interpretation which would also allow for the inclusion of species within the scope of Article 11, the Commission acknowledged at the hearing that the Implementing Regulation is an old piece of secondary legislation, implicitly in need of an (interpretative) update.

66. The discussion in the written observations and at the hearing confirmed that the operation of the agricultural exemption is, in practice, quite complex.

67. When use is made of that exemption, in order to safeguard agricultural production (that is, the farmers' interests), it would appear somewhat difficult, in practice, to ensure that holders receive the (equitable) remuneration that they are entitled to (that is, the interests of the holders, representing the breeders). Information, which is paramount for that purpose, seems to be difficult to obtain because of the procedural regime laid down by those texts, as interpreted by the case-law. [23] That conclusion appears all the more warranted when compared to the 'normal' situation, namely when farmers who cannot avail themselves of the agricultural exemption use protected varieties. In that scenario, it is easier for the holders to enforce their intellectual property rights since their authorisation is needed, so that holders get *ex ante* the necessary information on the use of protected varieties.

68. It should be recalled that, by virtue of Article 2(2) of the Implementing Regulation, 'the legitimate interests [of the holder and of the farmer] shall not be considered to be safeguarded if one or more of these interests are adversely affected without account being taken of the need to maintain a reasonable balance between all of them'. Yet, the combined effect of the judgments in *Schulin* and *Brangewitz* makes it, in reality, rather challenging to obtain information from farmers (or processors). As explained above, [24] the Court held that the holder must be authorised to request information from a farmer where he has *some indication* that the farmer has relied or will rely on the derogation provided for by Article 14(1) of the Basic Regulation. [25] The Court added that 'it should be

23 It should be noted that the Court expressly stressed in *Schulin* 'the difficulty the holder has in asserting his right to information, by reason of the fact that ... examination of a plant does not reveal whether it was obtained by the use of the product of the harvest or by the purchase of seed'. Judgment of 10 April 2003 (C-305/00, EU:C:2003:218, paragraph 63).

24 See points 55 to 56 of this Opinion.

25 Judgment of 10 April 2003, *Schulin* (C-305/00, EU:C:2003:218, paragraph 63).

possible for the holder to make arrangements to know the name and address of the farmers who buy propagating material of one of his protected plant varieties, however long the distribution chain between the holder and the farmer'. [26] And, 'what is more, in reliance on the second subparagraph of Article 13(2) of Regulation No 2100/94, the holder can require his distributors to record the names and addresses of farmers who buy propagating material of one of his plant varieties'. [27]

69. However, the Appellant rather convincingly explained at the hearing, without being contradicted by any another participant, why relying on distributors is not really an option to give effect to the holders' rights. There is allegedly no such distribution chain in so far as the holders represented by the Appellant do not distribute their seeds but grant production and distribution licences. Thus, seeds are actually marketed by other undertakings, which raises two different problems. First, those undertakings are reluctant to give the names of their clients for reasons of confidentiality. Second, asking undertakings downstream in the distribution chain to disclose the names of their clients might also pose problems in terms of competition law.

70. It follows that, in the absence of a contract between the farmer (or the processor) and the holder that would define the relevant information to be provided by the former to the latter, as provided for under Article 8(1) and Article 9(1) of the Implementing Regulation, it does not appear very easy in practice for the holder to obtain information from farmers or processors.

71. It is within that practical context that the Appellant essentially argues that the operation of the current system is problematic and that, if access to information from official bodies under Article 11 were to be interpreted broadly, the overall paperwork and transaction costs for everybody involved would decrease.

72. As a matter of legislative drafting, I would have much personal sympathy for such an approach. Any measure aimed at unburdening the individual from having to provide information that is already in the possession of the public authority should, as a matter of principle, be welcomed.

73. Therein lies, however, precisely the problem: what the Appellant is proposing goes well beyond anything that could normally be regarded as interpretation of a legal provision. Such an interpretation would alter the system and the logic of the Implementing Regulation, while putting it at odds with the logic of the Basic Regulation. [28] A judicial intervention of that nature would also

26 Ibid. Paragraph 66.

27 Ibid. Paragraph 68. Article 13(2)(c) and (d) of the Basic Regulation notably provides that the authorisation of the holder is needed for the purposes of offering for sale, selling or other marketing.

28 Above, point 61.

immediately produce logical inconsistencies across the entire piece of legislation. [29]

74. Moreover, such an isolated 'interpretative' intervention could also create a number of new issues of its own. By receiving more general information on a presumably broad range of farmers (at least all those cultivating the species enumerated in Article 14(2) of the Basic Regulation — or perhaps even other species), including those who have never used or intended to use protected varieties under Article 14(1), it cannot be overlooked that holders would gain access to information that goes far beyond the scope of what is required for the purposes of protecting their intellectual property rights. Such information could potentially be used for a number of other commercial aims, which are far removed from — or even wholly unconnected to — the safeguarding of the holders' remuneration rights vis-à-vis current clients.

75. Official bodies thus cannot, on the basis of EU law as it currently stands, become by default the main providers of information in a system that relies on farmers and processors and in which compliance is a matter of exclusive responsibility of holders, as clearly follows from Article 14(3), fifth and sixth indents, of the Basic Regulation.

76. For all these reasons, if the problems outlined in this section do indeed have some basis in reality, it is for the Commission, which seemed to acknowledge at the hearing the somewhat outdated character of the current EU law implementing provisions, to go back to the drawing board and to design a new system. [30] It is somewhat peculiar to attempt to pass that responsibility on to this Court, especially in a legislative context like the present one, where even a well-intended judicial intervention relating to one discrete provision, without altering the overall logic of the system, is likely to generate more problems than solutions. [31]

## C. Question 2

77. Question 2 is divided into two parts. First, the referring court enquires into the definition of an 'official body involved in the monitoring of agricultural production', within the meaning of Article 11(2), first indent, of the Implementing Regulation. Second, the referring court asks if such an official body may withhold the requested information should the provision of such information entail a cost for that body, which the holder would nonetheless be prepared to bear.

29 Within Article 11 of the Implementing Regulation itself, but also with other provisions thereof — see above, points 51 to 62.

30 In general, on the duty of the EU legislature to keep abreast of the evolving social and economic context (or face the consequence of its legislation being challenged as to its validity), see my Opinions in *Confédération paysanne and Others* (C-528/16, EU:C:2018:20, point 139), and in *Lietuvos Respublikos Seimas* (C-2/18, EU:C:2019:180, point 99).

31 Similarly, see my Opinion in *Schrems* (C-498/16, EU:C:2017:863, point 123).

78. Notwithstanding the negative answer that I have advocated with regard to Question 1, which makes a response to Question 2 unnecessary, I will still address the referring court's two queries within Question 2, should the Court decide to follow a different route as to how requests for information under Article 11(1) of the Implementing Regulation are to be formulated. In addition, since nothing prevents the Appellant, or any other holder of intellectual property rights, from making a further request pursuant to Article 11 of the Implementing Regulation at any time, I would also suggest that those questions are of some general and practical relevance and merit a reply from the Court.

### *1. Question 2(a): who qualifies as an 'official body involved in the monitoring of agricultural production'?*

79. Under Article 11(2), first indent, of the Implementing Regulation, an official body may withhold information 'if it is not involved in the monitoring of agricultural production'. Is a public authority, such as the one in the present case, which is entrusted with the task of monitoring the grant of subsidies to farmers, an official body 'involved in the monitoring of agricultural production'?

80. The Appellant and the Commission largely share the same view, although on slightly different grounds. The Appellant contends that a body in charge of EU farm subsidies is an official body involved in the monitoring of agricultural production since examining the legality of subsidies requires monitoring of agricultural production. The Commission argues that a broad interpretation of that concept is warranted to ensure the effectiveness of the right to information. It should encompass any official body having information on agricultural production, including authorities competent to pay subsidies.

81. The Respondent and the Spanish Government are of the opposite view. A public authority in charge of EU subsidies is not involved in the monitoring of the production of plants. The managing of EU subsidies obliges that authority to obtain certain data relating to varieties from farmers who apply for such subsidies in order to determine whether those varieties belong to the EU common catalogue of plant varieties. However, the public authority does not have to verify whether those varieties are protected varieties and who their holders are. That information is not relevant for that authority to carry out its tasks.

82. Admittedly, public authorities monitoring EU subsidies are not, strictly speaking, involved in agricultural production. There is, however, very little doubt in my mind that, on any reasonable reading of that expression, such authorities are clearly involved in the *monitoring* of agricultural production.

83. First, even if they are not engaged in agricultural production, public authorities monitoring EU subsidies do monitor that production, since EU

subsidies are tailored in scope and amount to the farmers' production activities. [32] Such authorities are therefore certainly involved in monitoring agricultural production, even though they do not 'control' production in the sense of a centrally planned economy by deciding, for instance, whether and at what level production should be capped.

84. Whether such public authorities have available to them, within their overall monitoring activities, the exact type of information requested by the Appellant is naturally relevant. That is, however, a different question. A public authority can be engaged, in general, in monitoring agricultural production, even if that monitoring does not involve a very specific type of information. That said, it was stated at the hearing that the Respondent *does* have certain relevant data concerning varieties.

85. Second, Article 11(2) of the Implementing Regulation already contains several — rather broadly phrased — exceptions [33] to the duty to provide information that allow official bodies to withhold the information requested. However, those exceptions should be construed strictly in order to guarantee any residual effectiveness of the rule. An excessively narrow reading of the concept of an 'official body involved in the monitoring of agricultural production', such as limiting it only to those bodies that have been established purely in order to implement Article 11 of the Implementing Regulation, would make it practically impossible for any authority to be characterised as an 'official body involved in the monitoring of agricultural production'. [34] That concept must therefore be interpreted in a reasonable manner that guarantees the effectiveness of the holder's right to obtain (certain) information from official bodies. [35]

86. It follows that a public authority in charge of the monitoring of the grant of EU subsidies is an official body involved in the monitoring of agricultural production. Accordingly, such a body cannot rely on the exception to the duty to provide information set out in Article 11(2), first indent, of the Implementing Regulation.

32 Paying agencies, which are responsible for the management and control of agricultural funds, must have a system of internal controls that provides sufficient guarantees that payments are legal and regular. That integrated system must comprise a computerised database, an identification system for agricultural parcels, aid applications and an integrated control system. In respect of the latter, checks on aid applications to verify the eligibility conditions for the aid should be carried out. See, notably, Articles 59, 67, 68 and 74 of Regulation No 1306/2013.

33 See above points 8 and 62.

34 Also because it transpired from the discussion at the hearing that, since the default and basic monitoring under both the Basic Regulation and the Implementing Regulation has been entrusted to the holder, no special network of designated national authorities has been established.

35 The strength of the rule under which official bodies must provide lawfully requested information is further underlined by Article 11(4) of the Implementing Regulation, which lays down a duty to state reasons, in writing, for refusals to give access to the requested information.

## 2. *Question 2(b): additional costs*

87. By Question 2(b), the Court is called upon to determine the conditions under which an official body can withhold the requested information when processing that information entails extra costs for that body. Furthermore, does the fact that the holder, as the author of the request for information, is willing to bear those costs have any significance for that answer?

88. According to the Appellant and the Commission, getting the information must be distinguished from processing it: an official body may withhold information only if obtaining, as opposed to processing, that information creates extra costs. In the present case, it is undisputable that the official body has *received* information without extra costs. In any case, the Appellant and the Commission submit that the official body cannot refuse to provide information if the person requesting the information is ready to account for those costs.

89. The Respondent and the Spanish Government argue that the extra effort that the search would entail for the official body would have an impact on its organisation and management and could even affect the normal performance of its tasks. Although the information requested by the holder is available in the Respondent's database, a special search function would have to be set up in order to retrieve that information from the database. The Respondent claims that it does not have its own programming capabilities to carry out the necessary search to compile the requested data. To that end, it would need to rely on the services of an external provider. The estimated cost would be approximately EUR 6 000.

90. In my view, it is ultimately for the referring court to answer this rather factual question and determine whether, in the circumstances of the case, the required processing of the data, which is already available, entails additional work so considerable that the official body cannot be expected to carry it out. I will, however, provide some general guidance in what follows. [36]

91. First, Article 11(2), fifth and sixth indents, of the Implementing Regulation provide that the official body may withhold the requested information if 'such information cannot be obtained through ordinary performance of the tasks of the official body' or 'if such information can only be obtained with additional burden or costs'.

92. The Respondent admitted at the hearing that the information requested was *available* in the database, although it could not *retrieve* it without the help of another service provider. Does such a situation fall within either of the two exceptions mentioned above?

36 Naturally, with the caveat that what follows would only be relevant if the original request indeed falls under Article 11 of the Implementing Regulation. In line with what has been suggested above, at points 38 to 42, of this Opinion, should a request to the national administrative authority be formulated concerning species, national law and its principles concerning access and extra costs would apply.

93. Although I acknowledge the significance of the distinction between *obtaining* and *processing* information in the context of paper documents, as rightly pointed out by the Respondent and the Commission, I am not entirely convinced that that distinction is of great analytical help in the context of electronic databases. A (potentially unlimited) reservoir of information is likely to be contained in any large electronic database or data set. It is the need to extract the information from that source in a structured and useful way that presents the real problem and burden in practice. [37]

94. Certainly, any request for information requires *some work* on the part of the person who holds or is likely to hold the information. However, according to the Court, in the context of its case-law on access to documents of EU institutions, in the interests of good administration, the workload involved in processing requests for access to documents should not be *disproportionate*. [38]

95. Thus, instead of focusing on the distinction between obtaining a document and processing a document, it might be more helpful, in the context of obtaining information from electronic databases or data sets, to look at the overall amount of extra work needed. A request for information cannot be rejected solely on the basis that it entails extra work. The test is rather *how much* extra work is required and at what point that extra work becomes *disproportionate*.

96. In the present case, as stated by the Appellant and the Commission, the information is already available in the database. In addition, since no official body is specifically charged with collecting information on the use of protected varieties, even if for another purpose, the right to information would be deprived of its substance if it were denied because of the costs involved in processing that information.

97. Those two considerations do carry a certain weight, in particular in the specific context of electronic databases. Depending on its structure and internal organisation, a lot of information might be obtained from an electronic database, often with minimal effort. Much like looking through a kaleidoscope, a small rotation (a command or a click) might completely change the picture. [39] In that context, all sorts of information can be retrieved more easily and accessed with relatively little effort while, of course, individual requests cannot be allowed to turn the authority into a research agency for private purposes.

37 See, notably, judgment of 11 January 2017, *Typke* v *Commission* (C-491/15 P, EU:C:2017:5, paragraph 34). Put differently, in the context of such electronic databases or data sets, most of the real burden is likely to relate to *processing*. The information is actually available, but, without proper structuring and framing, it is effectively useless.

38 See, for example, judgment of 2 October 2014, *Strack* v *Commission* (C-127/13 P, EU:C:2014:2250, paragraphs 27 to 28). See also my Opinion in *Typke* v *Commission* (C-491/15 P, EU:C:2016:711, point 41).

39 See my Opinion in *Typke* v *Commission* (C-491/15 P, EU:C:2016:711, points 45 to 46).

98. A rule of reason and proportionality should therefore be applied in deciding whether the authority is to grant access to the requested data despite the fact that some prior processing of that data is necessary. Within that overall context, it is for the referring court to assess, in the circumstances of the present case, whether retrieving the requested information requires considerable extra work that cannot reasonably be borne by the authority.

99. As regards, finally, the Appellant's offer to bear the extra costs entailed in the retrieval of the requested information from the database, it must be noted at the outset that that issue is distinct from whether access to the information should be granted. Costs are a different consideration from access. The decision to grant or to refuse access to information is not conditional upon a person declaring itself ready to bear the costs incurred by the authority.

100. That follows not only from the logic of rules on access to documents, where access is a step separate from costs, but also from the imperative of equality: the (in)ability to bear costs should never determine access. Otherwise, access to documents would only be possible for those who can pay.

101. Thus, once it has been decided to grant access in view of the reasonable amount of additional work required, it is for the official body to determine, as the next and independent step, whether the possible costs incurred are to be borne by the person requesting the information. In this respect, analogies can again be made with access to documents of the EU institutions or with the reuse of public sector information. In particular, Regulation (EC) No 1049/2001 provides that the cost of producing and sending copies may be charged to the applicant, although this charge cannot exceed the real costs of producing and sending the copies. [40] By the same token, Directive 2003/98 provides that where charges are made for the reuse of documents, those charges shall be limited to the marginal costs incurred for their reproduction, provision and dissemination. [41]

102. Drawing on those rules by analogy, it would appear reasonable, in the present context, if the official body requested to provide information were to require the holders to pay the cost of providing that information within the limits of the real additional costs incurred by the official body in order to process the information.

103. Therefore, Article 11(2) of the Implementing Regulation must be interpreted as allowing an official body to withhold the requested information if processing the data already available is likely to entail a disproportionate workload that cannot reasonably be borne by that body.

40 See Article 10(1) of Regulation No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

41 See Article 6 of Directive 2003/98.

## V. Conclusion

104. In the light of the abovementioned considerations, I propose that the Court answer the questions posed by the Thüringer Oberlandesgericht (Higher Regional Court of Thuringia, Germany) as follows:

– Article 11(1) of Commission Regulation (EC) No 1768/95 of 24 July 1995 implementing rules on the agricultural exemption provided for in Article 14(3) of Council Regulation (EC) No 2100/94 on Community plant variety rights is to be interpreted as requiring requests for information to official bodies to be formulated with regard to specific protected varieties. That provision, however, does not prevent Member States from providing for access to information from official bodies regarding species under national law.

– A public authority in charge of monitoring the grant of EU subsidies is an official body involved in the monitoring of agricultural production. Accordingly, such a body cannot avail itself of the exception to the duty to provide information set out in Article 11(2), first indent, of Regulation No 1768/95.

– Article 11(2) of Regulation No 1768/95 must be interpreted as allowing an official body to withhold the requested information if processing the data already available is likely to entail a disproportionate workload that cannot reasonably be borne by that body.