



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 6 September 2013**

**13397/13**

**JUR 447  
ENV 811**

**INFORMATION NOTE**

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from: Council Legal Service  
to: COREPER (1st part)  
Subject: Case before the Court of Justice of the European Union:  
- Case C-329/13 (Stefan)

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1. By order notified to the Council on 16 July 2013, the Unabhängiger Verwaltungssenat Wien (Austria) has made a reference to the Court of Justice for a preliminary ruling pursuant to Article 267 TFEU, regarding the validity of Parliament and Council Directive 2003/4 on access to environmental information.
2. It appears from the order for reference that the main proceedings concern a refusal by the Austrian authorities to supply the applicant certain environmental information in accordance with Directive 2003/4. The information being requested relates to the water level and flow of the river Drau, at the time of flooding in late 2012, which was allegedly aggravated by the conduct of the power company Verbund Hydro Power AG. Since legal proceedings may be brought against that company or certain members of its staff, the national court apparently considers that the right to a fair trial could be prejudiced if the information being requested were made available to the public. According to the order for reference, there is a risk that the media would report the (accurate) information in a manner which could unfairly influence the judges who will be required to decide on the liability or otherwise of the power company and its personnel.

3. Article 4(2) of the Directive specifically empowers Member States to refuse to disclose environmental information if they consider that disclosure would adversely affect the course of justice or the ability of any persons to receive a fair trial. Nevertheless, according to the order for reference, the Austrian legislature has not availed itself of this possibility. The referring court considers that the Directive therefore requires disclosure (in view of the Austrian legislature's decision regarding Article 4(2)). However, since it also concludes that such disclosure would prejudice the right to a fair trial, it considers that the Directive must be invalid in the light of Article 6 TEU and Article 47(2) of the Charter of Fundamental Rights of the European Union.
4. It is appropriate that the Council should submit observations in accordance with Article 20 of the Court's Statute in order to defend the validity of the act of which it was co-author. Although the order for reference was served on the Council (and the Member States) during the summer vacation period, no extension of the time-limit of 2 months and 10 days is possible, and the deadline for submitting observations by the Council is 26 September 2013. Member States and the other institutions may also submit observations.
5. The Director-General of the Council Legal Service has appointed Mr Matthew MOORE and Mr Joachim HERRMANN, members of the Legal Service, as the Council's agents in this case.

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