procedural information

Access to documentation on CO2 emissions from diesel vehicles

The plaintiff, a nationwide environmental association, requests - based on the Environmental Information Act (UIG) - from the Federal Ministry of Transport and Digital Infrastructure to inspect documents provided to the ministry by the automobile manufacturer involved, which relate to the issue of under-reported CO2 emissions from motor vehicles.

The lawsuit was successful before the administrative court. The Higher Administrative Court dismissed the appeals of the defendants and those summoned. In response to the appeal by those summoned, the Federal Administrative Court allowed the appeal due to the fundamental importance of the legal matter.

The revision procedure can probably contribute to a more detailed determination of the protected goods of the reason for rejection according to § 8 Para. 1 Sentence 1 No. 3 UIG and the requirements for the presentation of disadvantageous effects on the protected goods concerned. According to § 8 Para. 1 Sentence 1 No. 3 UIG, an application for access to environmental information is to be rejected if the disclosure of the information has adverse effects on the conduct of ongoing court proceedings, the right of a person to a fair trial or the implementation of criminal, administrative offenses or disciplinary investigations, unless the public interest in disclosure prevails.

Press Release No. 25/2021 of 04/26/2021

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Access to documents on CO2 emissions from motor vehicles

The German Environmental Aid has access to documents related to measurements of CO2 emissions from motor vehicles, which Volkswagen AG sent confidentially to the Federal Ministry of Transport in November 2015. That was decided by the Federal Administrative Court in Leipzig today.

The administrative court and the higher administrative court had upheld the lawsuit for access to information. The appeal by the summonsed Volkswagen AG, which was approved by the Federal Administrative Court, was unsuccessful.

The Federal Ministry of Transport is a body that is required to provide information. The exemption from the obligation to provide information that applies to action within the framework of legislation does not apply to the documents transmitted in the course of executive action. There are also no reasons for rejecting the application. After the conclusion of the relevant investigations by the Braunschweig public prosecutor's office, the disclosure of the information has no adverse effects on the

conduct of criminal investigations. There are also no apparent negative effects on a person's right to a fair trial or on the conduct of ongoing legal proceedings.

Reasons for refusal to protect company or business secrets as well as voluntarily transmitted information do not apply either. As far as the boundary conditions of test bench measurements are concerned, this is information about emissions whose confidentiality is not protected by law. Otherwise, for example in the case of product and market strategies, the public interest in disclosing the information outweighs the opposing interest in its confidentiality.

BVerwG 10 C 2.20 - Judgment of April 26, 2021

lower courts:

OVG Berlin-Brandenburg, 12 B 13.18 - Judgment of March 29, 2019 -

VG Berlin, 2 K 236.16 - Judgment of December 19, 2017 -

Resolution of April 22nd, 2020 - BVerwG 10 B 19.19ECLI:DE:BVerwG:2020:220420B10B19.19.0

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citation suggestion

BVerwG, decision of April 22, 2020 - 10 B 19.19 - [ECLI:DE:BVerwG:2020:220420B10B19.19.0]

decision

BVerwG 10 B 19.19

VG Berlin - 19.12.2017 - AZ: VG 2 K 236.16

OVG Berlin-Brandenburg - 29.03.2019 - AZ: OVG 12 B 13.18

In the administrative dispute, the 10th Senate of the Federal Administrative Court

on April 22, 2020

through

the President of the Federal Administrative Court Prof. Dr. dr h.c. Rennert

and the judges at the Federal Administrative Court Brandt and Dr. spoon leg

decided:

The defendant's complaint is dismissed.

The decision of the Berlin-Brandenburg Higher Administrative Court on the non-admission of

the appeal in the judgment of March 29, 2019 is overturned on the appeal of the summonsed parties. The revision is allowed.

The decision on the costs is reserved for the final decision.

The value of the matter in dispute is provisionally set at €5,000.

reasons

I

1

The plaintiff, a nationwide environmental association recognized under § 3 UmwRG, requests the Federal Ministry of Transport and Digital Infrastructure to inspect the documents provided to the ministry by the party summoned, which relate to the question of under-reported CO2 emissions from vehicles.

2

The lawsuit was successful before the administrative court. The appeals of the defendants and those summoned were dismissed by the Higher Administrative Court and the appeal against its judgment was not allowed. The complaints of the defendants and those summoned are directed against this.

II

3

The complaint of the summoned parties based on § 132 Para. 1 No. 1 VwGO is justified. The defendant's complaint based on Section 132 (2) Nos. 1 and 3 VwGO remains unsuccessful.

4

1. The complaint of those summoned is justified. The revision is to be allowed on their complaint due to the fundamental importance of the case (§ 132 Para. 2 No. 1 VwGO). The revision procedure can probably contribute to a more detailed determination of the protected interests of the reason for rejection according to § 8 Para. 1 Sentence 1 No. 3 UIG and the requirements for the presentation of disadvantageous effects on the protected interests concerned.

5

2. The defendant's appeal, however, remains unsuccessful.

6

2.1 The question raised by the defendant as a fundamental legal question as to whether Section 2 (1) no. 1

sentence 3 letter a UIG, according to which supreme federal authorities are not among the bodies subject to the obligation to provide information, insofar as and as long as they are active within the framework of the legislation, in addition to the activity at the national level also includes the legislative activity at the level of the European Union, cannot lead to approval of the revision.

7

If the lower court's decision is based on several independently supporting and equivalent justifications, the revision can only be admitted if a reason for the approval of the revision is shown and exists with regard to each of these justifications. If there is only one reason for admission, this reason can be ignored without changing the outcome of the procedure (StRspr, cf. BVerwG, decision of October 2, 2019 - 4 B 37.19 - juris marginal number 3 with further references). .

8th

Such a multiple justification is present here. On the one hand, the Higher Administrative Court did not consider the factual requirements of § 2 Para. 1 No. 1 Sentence 3 Letter a UIG to be met because the exemption is limited to the national legislative level. On the other hand ("apart from ..."), however, also because there is no functional connection between the content of the documents in dispute and a legislative procedure.

9

Contrary to the view of the defendant, the second line of reasoning is not just in the sense of a partial or follow-up question to the legal question formulated with the fundamental complaint on the applicability of Section 2 (1) No. 1 Sentence 3 Letter a UIG to legislative activity at the level of related to European Union. Rather, the question of the functional and content-related connection arises in the same way with regard to both the national and the European level of legislation.

10

The defendant also unsuccessfully invokes an exception to the special disclosure requirements, which applies if the reasons for the decision are not equivalent due to different legal effects (see BVerwG, decisions of April 11, 2003 - 7 B 141.02 - NJW 2003, 2255 < 2256> and from December 20, 2016 - 3 B 38.16 - Buchholz 310 § 132 Para. 2 No. 1 VwGO No. 66 Rn. 4 f.). This is not the case here. The different justification efforts for answering one or the other question highlighted by the defendant does not change the fact that both justifications deny the factual prerequisites of the exception according to § 2 Para. 1 No. 1 Sentence 3 Letter a UIG.

11

According to this, the defendant does not get through with its complaint of principle regarding the first strand of reasoning, if only because the complaint for clarification relating to the second reasoning remains unsuccessful (see 3.).

12

2.2 The defendant did not raise a further fundamental complaint regarding the reason for rejection according to Section 8 (1) sentence 1 no.

13

Contrary to the view expressed by the defendant after the expiry of this period, the complaint relating to the failure to question a representative of the public prosecutor's office and raised in a timely manner (see 3.) does not at the same time contain a fundamental complaint. It is true that procedural issues can also be the subject of an appeal on grounds of fundamental importance or because of a divergence with regard to the procedural law applicable in this respect, so that an exchange of the grounds for admission can be considered (see, for example, BVerwG, decision of April 12, 2001 - 8 B 2.01 - Buchholz 310 § 92 VwGO No. 13 S. 5). This is not the point here.

14

The statements of the defendant regarding what they consider to be an incorrect legal opinion of the public prosecutor's office on the scope of Section 8 (1) sentence 1 no not fair.

15

A legal matter is fundamentally significant within the meaning of Section 132 (2) No. 1 VwGO if, in the intended revision procedure, the clarification of a legal question of revisable law that has not yet been clarified by the supreme court and in its significance goes beyond the individual case on which the complaint is based, requires clarification (Section 137 Para. 1 VwGO) is to be expected. The statement of grounds of appeal must state, i.e. it must be explained in more detail, that and to what extent these requirements are met (stRspr, BVerwG, decisions of October 2, 1961 - 8 B 78.61 - BVerwGE 13, 90 <91> and of January 24, 2020 - 10 B 17.19 - juris marginal note 5 with further references).

16

The complaint does not explain the significance of a legal question that has been raised with sufficient clarity beyond the individual case, nor the need for clarification. Rather, the defendant's arguments regarding Section 8 (1)

sentence 1 no. 3 alternative 3 UIG are limited to the presentation of what they believe to be the basis to be laid substantive legal situation.

17

3. The defendant's revision is also not permitted because of a procedural error (§ 132 Para. 2 No. 3 VwGO). The reprimands raised (cf. § 86 Para. 1 VwGO) do not go through.

18

The statement of grounds for appeal lacks the description of facts required under Section 133 (3) sentence 3 VwGO from which the alleged procedural defects should result due to witnesses being wrongfully omitted to be heard. This also includes explanations of the presumed result of missing evidence and to what extent this result - according to the substantive legal opinion of the lower court - could have led to a decision more favorable to the complainant (cf. only BVerwG, judgment of April 30, 2009 - 1 C 6.08 - NVwZ 2009, 1162 Rn. 14 with further references).

19

The arguments of the defendant do not do justice to this. It is unable to make clear what perceptions prosecutor representatives, who were not questioned as witnesses, could have stated facts that were more favorable for the defendant in relation to the reason for refusal of § 8 Para. 1 Sentence 1 No. 3 UIG decision could have led. With the submission that the hearing of the witnesses would have confirmed that the disclosure of the requested documents would continue to have adverse effects on the conduct of criminal investigations and on the right of those involved to a fair trial, the defendant merely names legal assessments, but not facts accessible to evidence. The same applies if the defendant also points out that representatives of the public prosecutor's office have stated that they misjudged the scope of Section 8 (1) sentence 1 no. 3 UIG and neglected aspects that are essential for the criminal proceedings.

20

In addition, according to the minutes of the oral hearing before the Court of Appeal, the defendant failed to work towards the collection of evidence from witnesses, in particular by submitting a formal application for evidence. Such an omission cannot be compensated for by a procedural objection in the appeal proceedings (cf. only BVerwG, decision of December 18, 2019 - 10 B 14.19 - juris marginal note 21 with further references).

21

Also with regard to the failure to interrogate the witness R.D. - with regard to whose interrogation the defendant, according to the minutes of the oral hearing before the court of appeal, also did not submit a formal application for evidence - she does not demonstrate a lack of clarification (§ 133 para. 3 sentence 3 VwGO). As just explained, this also includes explanations as to what the presumed result of a missing taking of evidence had in detail and to what extent this result could have led to a decision more favorable to the complainant.

22

The defendant does not sufficiently explain what presumed concrete result an examination of the witness R. D. would have produced in factual terms to prove the defendant's activity within the framework of the legislation (cf. § 2 Para. 1 No. 1 Sentence 3 Letter a UIG). Rather, on the one hand, it only refers in an abstract way to the fact that the questioning of the witness R.D. would have helped to prove the existence of the functional connection with the content of the Union legislation. On the other hand, the defendant only submits that the witness could have stated that the documents requested were (co-) triggers of European legislative activity and were and are used for the specific design of the legislative acts. An active participation of the defendant in the context of a European legislative process using the documents at issue does not result from this presentation.

23

The interrogation of the witness R.D. did not have to be imposed on the court of appeal as part of its duty to conduct an official investigation. The defendant did not put anything into the knowledge of the witness R.D. that would have been sufficient to affirm a functional and content-related connection of the documents in dispute with a specific norm-setting procedure. For the Court of Appeal, the decisive reason for denying such a connection was that the activity of the defendant, during which the information in dispute was transmitted to it, was of an executive nature, because possible violations of the law by vehicle manufacturers on the basis of the previously applicable European law were in the room and had given rise to an examination of whether and to what extent action by the Federal Motor Transport Authority was indicated. This is not called into question by the facts brought into the knowledge of the witness.

24

The determination of the amount in dispute is based on Section 47 (1) and (3) and Section 52 (2) GKG for the defendant's complaints procedure, and on Section 47 (1), Section 52 (2) and Section 63 (1) GKG for the

appeal procedure.

Legal appeal

The complaints procedure is continued as an appeal procedure under file number BVerwG 10 C 2.20. It is not necessary for the party summoned to file an appeal.

The revision must be justified within one month after delivery of this decision. The justification must be submitted to the Federal Administrative Court, Simsonplatz 1, 04107 Leipzig, in writing or in electronic form (§ 55a Para. 1 to 6 VwGO as well as the regulation on the technical framework conditions for electronic legal transactions and on the special electronic official mailbox of November 24th, 2017, BGBl. I p. 3803).

There is a representation obligation for those involved; this also applies to the justification for the revision. The parties involved must be represented by authorized representatives within the meaning of Section 67 (4) sentences 3 to 6 VwGO, Section 5 No. 6 Alt. 2 RDGEG.

Judgment of April 26, 2021 - BVerwG 10 C 2.20ECLI:DE:BVerwG:2021:260421U10C2.20.0

EN

Access to documents on CO2 emissions from motor vehicles

Motto:

Only information generated within the framework of legislation is subject to the area exception according to § 2 Para. 1 No. 1 Clause 3 Letter a UIG.

sources of law

UIG Section 2 Paragraph 1 No. 1 Clause 3 Letter a, Section 8 Paragraph 1 Clause 1 Clause 3, Section 9 Paragraph 1 Clause 1 Clause 3 and Clause 2, Clause 2

Directive 2003/4/EC Art. 4 Para. 2 Subpara. 2 set 3