



Reports of Cases

OPINION OF ADVOCATE GENERAL
HOGAN
delivered on 12 November 2019¹

Case C-535/18

**IL,
JK,
KJ,
LI,
NG,
MH,
OF,
PE,
Heirs of QD, consisting of RC and SB,
TA,
UZ,
VY,
WX
v
Land Nordrhein-Westfalen**

(Request for a preliminary ruling from the Bundesverwaltungsgericht (Federal Administrative Court, Germany))

(Reference for preliminary ruling — Environment — Directive 2011/92/EU — Environmental impact assessment — Directive 2000/60/EC — EU action in the field of water policy — Right of appeal in the event of procedural errors — National regulations limiting right of appeal in the event of procedural errors)

I. Introduction

1. In what circumstances can a private citizen challenge the validity of an administrative decision granting permission for a major road project on the ground that the requirements of EU environmental law have not been complied with? This is one of the fundamental questions which have been raised by this present request for a preliminary ruling. It concerns the interpretation of Articles 6 and 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment ('the EIA Directive')² and of Article 4(1)(a)(i) to (iii) and (b)(i) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ('the Water Framework Directive' or 'the WFD').³

¹ Original language: English.

² OJ 2012 L 26, p. 1.

³ OJ 2000 L 327, p. 1.

2. This request was made in the context of proceedings between private individuals ('the Claimants') and the Land Nordrhein-Westfalen (Land North Rhine-Westphalia, Germany) concerning a decision of the District Government of Detmold, Germany, approving the plan for the new construction of the A 33 motorway/Federal Road B 61, Ummeln junction.

3. The questions asked by the referring court once again require the Court to address not only the extent of citizens' right of appeal in environmental matters but also other questions touching on substantive EU environmental law, particularly the concept of what constitutes a deterioration of a body of water within the meaning of the Water Framework Directive.

II. Legal context

A. EU law

1. The EIA Directive

4. Article 6 of the EIA Directive states:

'1. Member States shall take the measures necessary to ensure that the authorities likely to be concerned by the project by reason of their specific environmental responsibilities are given an opportunity to express their opinion on the information supplied by the developer and on the request for development consent. To that end, Member States shall designate the authorities to be consulted, either in general terms or on a case-by-case basis. The information gathered pursuant to Article 5 shall be forwarded to those authorities. Detailed arrangements for consultation shall be laid down by the Member States.

2. The public shall be informed, whether by public notices or by other appropriate means such as electronic media where available, of the following matters early in the environmental decision-making procedures referred to in Article 2(2) and, at the latest, as soon as information can reasonably be provided:

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;
- (c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;
- (d) the nature of possible decisions or, where there is one, the draft decision;
- (e) an indication of the availability of the information gathered pursuant to Article 5;
- (f) an indication of the times and places at which, and the means by which, the relevant information will be made available;
- (g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

3. Member States shall ensure that, within reasonable time frames, the following is made available to the public concerned:

- (a) any information gathered pursuant to Article 5;
- (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- (c) in accordance with the provisions of 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)], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

4. The public concerned shall be given early and effective opportunities to participate in the environmental decision-making procedures referred to in Article 2(2) and shall, for that purpose, be entitled to express comments and opinions when all options are open to the competent authority or authorities before the decision on the request for development consent is taken.

5. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) and for consulting the public concerned (for example by written submissions or by way of a public inquiry) shall be determined by the Member States.

6. Reasonable time frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.'

5. Article 11(1) of the EIA Directive provides:

'Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned:

- (a) having a sufficient interest, or alternatively;
- (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition;

have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of this Directive.'

2. *The Water Framework Directive*

6. The definitions of the 'surface water status' and of the 'groundwater status' are given in Article 2(17) and (19) of the WFD. For the purposes of the Water Framework Directive, 'surface water status' is 'the general expression of the status of a body of surface water, determined by the poorer of its ecological status and its chemical status' and 'groundwater status' is 'the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status'.

7. According to Article 2(25) of the WFD, 'good groundwater chemical status' is the chemical status of a body of groundwater, which meets all the conditions set out in Table 2.3.2 of Annex V to the directive.

8. Article 4 of the WFD, entitled 'Environmental objectives', provides:

1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters

- (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
- (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
- (iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;

...

(b) for groundwater

- (i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
- (iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

...'

B. German law

9. Paragraph 4 of the Umwelt-Rechtsbehelfsgesetz, as published on 23 August 2017 (Environmental Appeals Act, 'UmwRG') provides:

'(1) The annulment of a decision regarding the lawfulness/admissibility of a project according to points 1 to 2b of the first sentence of Paragraph 1(1) may be requested where:

1. (a) an environmental assessment or

(b) a case-by-case preliminary evaluation of the need to carry out an environmental assessment,

as required by the provisions of the Environmental Impact Assessment Act (UVPG)..., has neither been carried out at the time when it was due nor thereafter.

2. a required public participation within the meaning of Paragraph 18 of the Environmental Impact Assessment Act (UVPG) or within the meaning of Paragraph 10 of the Federal Immission Control Act has neither been carried at the time it was due nor thereafter, or

3. another procedural defect has occurred that

(a) has not been remedied/made good,

(b) is comparable in nature and gravity to the cases referred to in points 1 and 2; and

(c) has deprived the public concerned of the opportunity, as provided by law, to participate in the decision-making process; such participation in the decision-making process shall include access to documents, which must be displayed for consultation by the public.

A case-by-case preliminary evaluation of the need for an environmental assessment that has been carried out but that does not meet the requirements of the second sentence of Paragraph 5(3) of the Environmental Impact Assessment Act (UVPG), shall be considered a preliminary examination that has not been carried out within the meaning of the first sentence of point 1(b).

(1a) Paragraph 46 of the Administrative Procedure Act (VwVfG) shall apply to procedural errors not covered by subparagraph (1). If the court cannot establish whether a procedural error as per the first sentence has influenced the decision on the matter, it shall be presumed that that was the case.

(1b) A breach of procedural rules shall only lead to the annulment of the decision according to point 1 to 2b or 5 of the first sentence of Paragraph 1(1), if it cannot be rectified/made good by amending the decision or by a supplementary procedure. The following provisions shall remain unaffected

1. Paragraph 45(2) of the Administrative Procedure Act (VwVfG), and

2. Paragraph 75(1a) of the Administrative Procedure Act (VwVfG) and other relevant legislation on the preservations of plans.

On application, the court may order that the hearing be suspended until procedural errors within the meaning of subparagraph (1) and (1a) have been remedied/made good, in so far as this is conducive to procedural concentration.

(2) ...

(3) Subparagraphs (1) to (2) shall apply to legal remedies by

1. persons within the meaning of point 1 of Paragraph 61 of the Administrative Court Rules (VwGO) and associations within the meaning of point 2 of Paragraph 61 of the Administrative Court Rules (VwGO) and
2. associations which meet the requirements of Paragraph 3(1) or Paragraph 2(2).

Point 3 of the first sentence of the first subparagraph shall apply to legal remedies filed by persons and associations as per point 1 of the first sentence, with the proviso that the annulment of a decision may only be demanded if the procedural error has deprived the party concerned of the opportunity to participate in the decision-making process as provided for by law.

(4) Paragraphs 1 to 2 shall apply *mutatis mutandis* to legal remedies brought by associations pursuant to point 2 of the first sentence of the third subparagraph against decisions pursuant to point 4 of the first sentence of Paragraph 1(1)...'

III. Facts of the main proceedings

10. By decision of 27 September 2016, the Bezirksregierung Detmold (District Government of Detmold) ('the Regulatory Authority') approved, at the request of the Landesbetrieb Straßenbau Nordrhein-Westfalen (the roadbuilding agency for the German state of North Rhine-Westphalia) ('the Project Developer'), the plan for the new construction of the A 33 motorway/Federal Road B 61, Ummeln junction. The approved section in question is approximately 3.7 kilometres long.

11. This decision also authorised the Project Developer to discharge rainwater flowing on road surfaces into three bodies of water or into the groundwater. It also provided, however, for a large number of ancillary provisions designed to ensure water quality both as regards surface water and ground water infiltration.

12. Between 30 August and 29 September 2010, the planning documents were on public display. Documents relating to traffic, species protection and wildlife were mentioned on the notice issued prior to the public display. No reference was made, however, to documents relating to noise protection and the planned drainage system. It was the absence of this documentation which raised public objections. A preliminary hearing was held on 10 and 11 April 2013.

13. Taking into account the results of the consultation procedure and the objections raised by the water authority, the Project Developer decided on various amendments to the plan, in particular with regard to rainwater drainage. It then established a 'cover page' listing the documents produced and indicating, where applicable, any changes made to them. While two traffic and noise-related documents were now mentioned, no technical studies on water drainage were included. Further public objections were then raised during the new further consultation which was held from 19 May to 18 June 2014.

14. It is in those circumstances that the Claimants — who in some instances are at risk of expropriation of their private property or who in other instances have a domestic well for their private supply of drinking water and who fear that their water supply might be contaminated — sought to appeal against the planning approval decision before the Bundesverwaltungsgericht (Federal Administrative Court, Germany).

15. The Bundesverwaltungsgericht (Federal Administrative Court) points out that there has been no documented assessment of bodies of water to ensure that water protection requirements are met. The planning approval decision only states in summary that the project was not likely to result either in a deterioration of the status of a body of surface water or in a deterioration of a body of groundwater. It was only during the judicial proceedings that the Regulatory Authority provided a 48-page technical report describing the bodies of water concerned and the impact of the project on their quality, without formally attaching it to the contested decision.

16. On the merits, the referring court first considers that the public was not sufficiently informed of the environmental effects of the project during the courses of the consultation procedure. However, it notes that, under national law, such a procedural defect can only be invoked by an individual claimant and may lead to the annulment of the planning approval decision only if he himself has been denied the opportunity to participate in the decision-making process. Even if, in the present case, the procedural defect did not, in its view, influence the outcome of the decision, it points out that the only decisive factor, in the case of an appeal by an individual applicant, is whether he or she has been deprived of this opportunity to participate in the decision-making process. However, the referring court considers that the national legislation by thus regulating the conditions for the admissibility of appeals brought by individuals would not contravene the objective of the EIA Directive, which is to give the public concerned wide access to justice.

17. Then, the referring court questions whether or not it is possible for the assessment relating to the prohibition of deterioration of bodies of surface water to take place and be verifiable by means of the corresponding documentation only after the adoption of the decision approving the plan.

18. Moreover, the referring court considers that the prohibition of deterioration of bodies of water applies not only to surface water but also to groundwater, so that the status of the latter must also be assessed prior to the authorisation of the project. However, it questions the criteria to be taken into account when determining whether or not there is a deterioration in the chemical status of a body of groundwater since the WFD only distinguishes, in this case, between good and poor status.

19. Finally, the referring court considers that the obligation to prevent the deterioration and the requirement for improvement of bodies of water referred to in Article 4 of the WFD do not imply, despite the binding nature of that provision, that it is admissible for all members of the public concerned by a project and claiming an infringement of their rights to challenge a decision infringing those obligations.

IV. The request for a preliminary ruling and the procedure before the Court

20. In those circumstances, by decision of 25 April 2018, received at the Court on 16 August 2018, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

- (1) Must Article 11(1)(b) of [the EIA Directive] be interpreted as meaning that a provision of national law is consistent with it, according to which a claimant who is not recognised as an environmental association is entitled to apply for the annulment of a decision due to a procedural defect only if the procedural defect has denied the claimant itself the opportunity — as provided for by statute — of participating in the decision-making process?
- (2) (a) Must Article 4(1)(a)(i) to (iii) of [the Water Framework Directive] be interpreted as meaning that it does not only include substantive criteria for examination but, in addition, specifications regarding the regulatory approval procedure?

- (2) (b) If Question (a) is answered in the affirmative, must the involvement of the public pursuant to Article 6 of the EIA Directive always relate to the documents regarding the assessment under water law in the aforementioned sense, or is it permissible to differentiate with regard to the time of the creation of the document and its complexity?
- (3) Must the term “deterioration of the status of a body of groundwater” in Article 4(1)(b)(i) of the WFD be interpreted as meaning that a deterioration of the chemical status of a body of groundwater exists as soon as at least one environmental quality standard for one parameter is exceeded for project-related reasons and that irrespective of that, if the relevant threshold for one pollutant has already been exceeded, any additional (measurable) increase of the concentration constitutes a deterioration?
- (4) (a) Taking into account its binding nature (Article 288 TFEU) and the guarantee of effective legal protection (Article 19 TEU), must Article 4 of the WFD be interpreted as meaning that all members of the public concerned by a project who assert that the approval of a project breaches their rights are also entitled to bring judicial proceedings asserting breaches of the ban on the deterioration of water and the requirement for improvement?
- (4) (b) If Question (a) is answered in the negative — taking into account its objective — must Article 4 of the WFD be interpreted as meaning that at least such claimants who maintain domestic wells for their private water supply in geographical proximity to the planned road are entitled to bring judicial proceedings asserting breaches of the ban on the deterioration of water and the requirement for improvement?

21. Written observations were submitted by the Claimants, the Polish Government and by the European Commission. The Claimants and the Commission presented oral argument before the Court at the hearing on 19 September 2019. I cannot forbear observing, however, that the fact neither the Land North Rhine-Westphalia or the Federal Republic of Germany saw fit to submit written submissions nor, for that matter, attend at the hearing is somewhat unfortunate. Given that the present case concerns the interpretation of rather complex provisions of German administrative and environmental law, it would, perhaps, have been better had the Court been given the opportunity of receiving submissions from the two entities responsible respectively for the application and the drafting of the legislation in question.

V. Analysis

A. *The first question*

22. By its first question, the referring court asks if Article 11(1)(b) of the EIA Directive must be interpreted as meaning that a provision of national law according to which a claimant who is not recognised as an environmental association is entitled to apply for the annulment of a decision due to a procedural defect only if the procedural defect has denied the claimant himself the opportunity — as provided for by statute — of participating in the decision-making process is consistent with that provision.

1. On the historical background of Article 11(1) of the EIA Directive and its interpretation

23. Article 11(1) of the EIA Directive provides that Member States shall ensure that members of the public concerned having a sufficient interest in bringing proceedings or maintaining the impairment of a right have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions, subject to the public participation provisions of this directive.

24. This provision corresponds to Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment⁴, which itself broadly corresponded to Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005⁵ ('the Aarhus Convention'). It is clear that Article 10a was inserted in Directive 85/337, together with other provisions, by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337 and 96/61/EC⁶ in order to align EU law with the requirements of the Aarhus Convention.⁷ It is also not in dispute that this Convention forms an integral part of the EU legal order.⁸

25. In that context, the Court has already ruled, on the one hand, that the review of the legality of decisions, acts or omissions falling within the scope of the EIA Directive is a review in which the legislature of the European Union has, in accordance with the objectives of the Aarhus Convention, sought to involve members of the public concerned having a sufficient interest in bringing proceedings or maintaining the impairment of a right, with a view to contributing to preserving, protecting and improving the quality of the environment and protecting human health⁹ and, on the other hand, that where a Member State lays down rules of procedural law applicable to the matters referred to in Article 9(3) of the Aarhus Convention, the Member State must be regarded as implementing an obligation stemming from that article. It follows, therefore, that the Member State must be regarded in turn as implementing EU law for the purposes of Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), so that the Charter is accordingly applicable.¹⁰

26. In those circumstances, it is clear that, as this Court has already ruled, 'that provision, [namely, Article 9(3) of the Aarhus Convention], read in conjunction with Article 47 of the Charter, imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law'.¹¹

27. This is why, although Member States enjoy a significant discretion to determine what constitutes 'sufficient interest' or 'impairment of a right', the provisions of Article 11 of the EIA Directive relating to the right of members of the public concerned by the decisions, acts or omissions which fall within that directive's scope to bring appropriate annulment proceedings cannot be interpreted restrictively¹² or in a manner which negates the substance of an objector's right to effective judicial protection.

28. The wording of Article 11(3) of the EIA Directive and the second paragraph of Article 9(2) of the Aarhus Convention also confirm that the extent of the Member States' discretion is limited by the need to respect the objective of ensuring wide access to justice for the public concerned.¹³

4 OJ 1985 L 175, p. 40.

5 OJ 2005 L 124, p. 1.

6 OJ 2003 L 156, p. 17.

7 See, to that effect, recital 5 of Directive 2003/35 and judgment of 11 April 2013, *Edwards and Pallikaropoulos* (C-260/11, EU:C:2013:221, paragraph 26).

8 See, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 45).

9 See, to that effect, judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 28).

10 See, to that effect, on Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7) ('the Habitats Directive'), judgment of 8 March 2011, *Lesoochranárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 52), and, on the Water Framework Directive, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 44).

11 Judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 45).

12 See, to that effect, judgment of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraphs 38 and 40).

13 See, to that effect, judgment of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraph 39).

2. On the applicability of Article 11 of the EIA Directive to the present case

29. In the present case, the national legislation makes the annulment of a decision subject to the condition that the procedural irregularity in question has had the effect of depriving the party concerned of the opportunity of actually participating in the decision-making process in the manner provided for by statute. The question which then arises is whether this condition itself complies with the requirements of Article 11 of the EIA Directive.

30. In that regard, it must be noted that by requiring Member States to ensure that the members of the public concerned have the opportunity to bring an action challenging the substantive or procedural legality of decisions, acts or omissions falling within the scope of the EIA Directive, the Union legislature has not sought to curtail the grounds which may be advanced in support of any such proceedings.¹⁴ Just as ‘it was not the intention of the legislature to make the possibility of invoking a procedural defect conditional upon that defect’s having an effect on the purport of the contested final decision’,¹⁵ one may similarly infer from the wording and objective of Article 11 of the EIA Directive — which ensures wide access to justice in the area of environmental protection — that the Union legislature was not willing to confine the right of the individual to challenge environmental decisions just simply to that particular category of cases where, by reason of a procedural defect, the claimant was deprived of the right to participate in the entire decision-making process as provided by law.

31. On the contrary, as the Court has already ruled in its judgment in *Gemeinde Altrip and Others* that, ‘given that one of the objectives of that directive is, in particular, to put in place procedural guarantees to ensure the public is better informed of, and more able to participate in, environmental impact assessments relating to public and private projects likely to have a significant effect on the environment, it is particularly important to ascertain whether the procedural rules governing that area have been complied with. Therefore, as a matter of principle, in accordance with the aim of giving the public concerned wide access to justice, that public must be able to *invoke any procedural defect* in support of an action challenging the legality of decisions covered by that directive’.¹⁶

32. This is especially the case with regard to environmental impact assessments themselves, since this vital aspect of environmental protection could well be compromised if development projects of this kind were to be authorised in the absence of an assessment which met the appropriate legal standards. It follows, therefore, that a party affected by the decision to grant development permission must have the right to complain in respect of any relevant procedural defect in respect of that administrative decision, save where the competent authorities provide evidence that the contested decision would not have been any different without this procedural defect.¹⁷

33. It is true, of course, that Article 11(3) of the EIA Directive — following the terms of Article 9(2) of the Aarhus Convention — draws a sharp distinction between the situations of individuals on the one hand and those of environmental protection organisations on the other. National legislatures are, in principle, therefore entitled to provide in this respect that the only rights whose infringement may be relied on by individuals who wish to object to a development project — such as the motorway junction in the present case — are substantive individual rights. On the other hand, such a national limitation cannot be applied in the case of challenges brought by environmental protection organisations.¹⁸

¹⁴ See, to that effect, judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 37); of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraphs 36 and 47); and of 15 October 2015, *Commission v Germany* (C-137/14, EU:C:2015:683, paragraphs 47, 58 and 77).

¹⁵ Judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 47).

¹⁶ Judgment of 7 November 2013 (C-72/12, EU:C:2013:712, paragraph 48). Emphasis added.

¹⁷ See, to that effect, judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraphs 49 to 53 and 57).

¹⁸ See, to that effect, judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 45), and of 15 October 2015, *Commission v Germany* (C-137/14, EU:C:2015:683, paragraphs 33 and 91).

34. In other words, while the Aarhus Convention and the EIA Directive, have to some degree thus provided for a form of *actio popularis* in the environmental field for environmental protection organisations, they have nonetheless expressly refrained from doing so in the case of challenges brought by private individuals. One must, however, recall that the provisions of Article 9(2) of the Aarhus Convention must be read in conjunction with Article 47 of the Charter, so that Member States are thereby under an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law.¹⁹ It follows in turn that the provisions of Article 11 of the EIA Directive relating to the right of members of the public concerned by the decisions, acts or omissions which fall within that directive's scope to bring actions cannot be interpreted restrictively.²⁰

35. In this context, it should therefore be recognised that the procedural guarantees provided for in the EIA Directive — in particular those provided for in Article 6 — must be considered as substantive individual rights. In those circumstances, a national rule could reasonably require individuals to demonstrate that they have been deprived of at least one of these procedural guarantees — such as, for example, access to relevant documents — in order to be able to apply for the annulment of a decision, act or omission which fall within that directive's scope. Such a requirement might be thought to serve important interests associated with the efficient and orderly administration of justice and, in particular, to ensure that any annulment proceedings are brought by private individuals who have been or who stand to be affected in some way by the alleged infringement.

36. If the national law in question simply has this effect then it would respect the wording of Article 11(1)(b) of the EIA Directive while preserving the objective of ensuring wide access to justice pursued by that directive. If, however, the effect of the national law in question were to make an individual's right to seek the annulment of a decision, act or omission falling within that directive's scope conditional on having been deprived of the right to participate in the *entire* decision-making process — due to the fact that the procedural guarantees provided for in the EIA Directive would not be considered as substantive individual rights — then this would be quite a different matter. In my opinion, such a state of affairs would amount to an infringement of Article 11(1)(b) of the EIA Directive since it would deprive such objectors of the substance of their right of access to the court process in environmental matters.

37. This conclusion is also in line with the requirements of Article 47 and Article 52(1) of the Charter.²¹ As I have just observed in the case of the EIA Directive, a general requirement that a private individual be affected by the procedural defect of which he or she complains certainly serves the interests of the general administration of justice and does not go beyond what is necessary to safeguard this goal. Such a requirement could not be therefore considered incompatible with the requirements of Article 47 of the Charter. Yet if the effect of the national law is to confine the right to object *only* to those cases where the private individual can show that he or she was deprived of the right to participate in the entire process, such a requirement would be excessive and disproportionate. It might additionally be said that such a state of affairs would be at odds with the objective of ensuring meaningful environmental protection in the manner envisaged by both the Aarhus Convention and the EIA Directive. It follows that any such restriction resulting from a national rule of this nature of the kind I have just mentioned would not respect the essence of the right to an effective remedy as recognised by Article 47 of the Charter.

¹⁹ See, to that effect, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 45).

²⁰ See, to that effect, judgment of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraphs 38 and 40).

²¹ As reminder, Article 52(1) of the Charter provides that 'any limitation on the exercise of the rights and freedoms recognised by [the] Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others'.

3. Conclusion on the first question

38. Accordingly, in the light of the foregoing considerations, I am of the view that Article 11(1)(b) of the EIA Directive does not preclude a provision of national law according to which a claimant, who is not recognised as an environmental association, is entitled to apply for the annulment of a decision, act or omission which falls within that directive's scope due to a procedural defect only if he demonstrates that he has been deprived himself of at least one of the procedural guarantees provided for in that directive, in particular those provided for in Article 6. On the other hand, Article 11(1)(b) of the EIA Directive precludes a provision of national law which makes an individual's right to seek the annulment of a decision, act or omission falling within the scope of that directive conditional on having been deprived of the right of participation in the decision-making process on the ground that the procedural guarantees provided for in that directive are not considered to be substantive individual rights.

B. The second question

39. By its second question, the referring court asks if Article 4(1)(a)(i) to (iii) of the Water Framework Directive must be interpreted as meaning that it does not only include substantive criteria for examination but, in addition, specifications regarding the regulatory approval procedure in the sense that it would be excluded that the assessment relating to the prohibition of deterioration of bodies of surface water only takes place and be verifiable by means of the corresponding documentation after the adoption of the decision approving the plan.

40. In addition, if answered in the affirmative, the referring court would like to know whether public participation in accordance with Article 6 of the EIA Directive always relates to the documents regarding the assessment under the WFD, or if it is permissible to differentiate with regard to the time of the creation of the document and its complexity.

41. As stated by the referring court in its judgment, the answer to the same question in the scope of the Habitats Directive is clear: according to the wording of Article 6(3) of that directive, an appropriate assessment of the implications for the site concerned of the plan or project must *precede* its approval.²² It therefore lies with the competent national authorities, in the light of the conclusions of the assessment of the implications of a plan or project for the site concerned, to approve the plan or project, but *only* after having *first* ascertained that it will not adversely affect the integrity of that site.²³

42. Although the Water Framework Directive does not contain precisely the same provision, it must be noted that, firstly, non-compliance with the requirements of Article 4(1)(a)(i) to (iii) of the WFD or Article 6(3) of the Habitats Directive has the same consequences; secondly, the first of these provisions pursues the same objectives as those adopted by the Court to support its interpretation of the second; thirdly, both share the same general legal and environmental context.

²² See, to that effect, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 53), and of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 42).

²³ See, to that effect, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 55).

43. First, as I have previously recalled, under the Habitats Directive, where doubt remains as to the absence of adverse effects on the integrity of the site linked to the plan or project being considered, the competent authority must refuse authorisation.²⁴ It is also clear that Member States are required by Article 4(1)(a)(i) to (iii) of the WFD — unless a derogation is granted — to refuse to grant a permit for an individual project where this may result in a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by that directive.²⁵

44. Second, the Court stated that Article 6(3) of the Habitats Directive ‘plays a part in attainment of the objective pursued by measures taken pursuant to that directive — which, as set out in Article 2(2) thereof, consists in maintaining or restoring, at favourable conservation status, natural habitats and species of wild fauna and flora of interest for the European Union — and of the directive’s more general objective, which is to ensure a high level of environmental protection as regards the sites protected pursuant to the directive’.²⁶ Those two objectives, specific and general, are also pursued by Article 4 of the WFD in the field of water protection. Indeed, according to the Court, this provision contributes to the achievement, on the one hand, of the main objective pursued by the measures taken under the WFD, which, as is clear from Article 1 of that directive, read in the light of recitals 11, 19, 27 and 34 thereof, is to protect the environment and, on the other hand, more specifically, to maintain and generally to improve the quality of the aquatic environment of the European Union.²⁷

45. Third, it follows from settled case-law that the authorisation criterion laid down in the second sentence of Article 6(3) of the Habitats Directive integrates the precautionary principle and thus seeks to prevent adverse effects on the integrity of protected sites as the result of the plans or projects being considered.²⁸ For this reason, the competent national authorities can authorise the activity at issue only if they have established that it will not adversely affect the integrity of the site involved.²⁹ This must also be the case for Article 4(1) of the Water Framework Directive since this directive is based on Article 175 TEC (now Article 192 TFEU). As such, it contributes to the achievement of the objectives of Union policy on the environment, which is based — as expressly required by Article 191(2) TFEU (ex-Article 174(2) TEC) and indicated in recital 11 of the WFD — on the precautionary principle.

46. In the light of the foregoing considerations, it seems to me that Article 4(1)(a)(i) to (iii) of the Water Framework Directive must be interpreted as meaning that it does not only include substantive criteria but that it necessarily implies, in addition, that any assessment or verification of these criteria relating to the prohibition of deterioration of bodies of surface water must precede the adoption of the decision approving the plan.

47. It can, furthermore, be observed that this interpretation is already reflected in the judgment of 1 June 2017, *Folk* (C-529/15, EU:C:2017:419). Indeed, the Court held that a national court is not obliged to examine by itself the observance of the conditions laid down in Article 4(7) of the WFD — which makes it possible to give an authorisation despite the fact that the project is likely to have adverse effects on water — and may confine itself to finding that the contested measure is unlawful where the competent national authority issued the authorisation without an examination of whether

²⁴ See, to that effect, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraphs 55 and 57).

²⁵ See, to that effect, judgments of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 51), and of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 31).

²⁶ Judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 43).

²⁷ See, to that effect, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 33).

²⁸ See, to that effect, judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 58); of 11 April 2013, *Sweetman and Others* (C-258/11, EU:C:2013:220, paragraph 41); and of 17 April 2018, *Commission v Poland (Białowieża Forest)* (C-441/17, EU:C:2018:255, paragraph 118).

²⁹ See, to that effect, judgment of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 59).

these conditions have been complied with.³⁰ But, above all, the Court stated that, ‘without prejudice to a possible judicial review, the national authorities which are competent to authorise a project *are required to review whether the conditions set out in Article 4(7)(a) to (d) of Directive 2000/60 are satisfied before granting such an authorisation*’.³¹ The precautionary principle which underlies the WFD thus necessarily implies that the obligation of prior assessment which follows from Article 4(7) of the directive — in order to benefit from a derogation — also applies to the main obligation set out in paragraph 1 of that article.

48. Regarding the second part of the second question, in the context of the public participation provided for by Article 6 of the EIA Directive, I do not think that it is permissible to make a difference depending on the timing of the creation or the complexity of a document relevant to the assessment imposed by the WFD.

49. First, it must be borne in mind that any review of the legality of decisions, acts or omissions falling within the scope of the EIA Directive seeks, in accordance with the objectives of the Aarhus Convention, to involve members of the public concerned, with a view to contributing to preserving, protecting and improving the quality of the environment and protecting human health.³²

50. Second, Article 6 of the EIA Directive must be interpreted in the light of the requirements of Article 6 of the Aarhus Convention which it implements. As Advocate General Kokott explained in her Opinion in Joined Cases *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:249), public participation in decisions which may have a significant effect on the environment provided for therein must take place at an early stage, *when all options are still open* and effective public participation can take place. This further emphasises the purpose of early participation, as ‘it is more effective when it can be taken into account in full in the realisation of the project’.³³ One might further observe that this desire to ensure the involvement of the public before the adoption of final decisions is expressly indicated in the field of water protection in recital 46 of the WFD.

51. In that context, it seems plain that to allow the distinctions suggested by the referring court would run counter to these objectives. On the one hand, making a distinction according to the date of a document would be likely to lead to the authorisation of certain projects without the public concerned having been informed in advance of their potential environmental impacts. On the other hand, making a distinction on the basis of the complexity of a document could lead national authorities to adopt a selective — and, possibly, subjective — approach to the detriment of the public concerned and, where appropriate, environmental protection.

52. Accordingly, in the light of the foregoing considerations, I conclude that Article 4(1)(a)(i) to (iii) of the Water Framework Directive must be interpreted as meaning that it does not only include substantive criteria for examination but also requires that the assessment relating to the prohibition of deterioration of bodies of surface water precedes the adoption of the decision approving the plan, regardless of the time of adoption or the complexity of the document relevant for such control.

30 Judgment of 1 June 2017, *Folk* (C-529/15, EU:C:2017:419, paragraph 38).

31 Judgment of 1 June 2017, *Folk* (C-529/15, EU:C:2017:419, paragraph 39). Emphasis added.

32 See, to that effect, judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 28).

33 Opinion of Advocate General Kokott in Joined Cases *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:249, point 26).

C. The third question

53. By its third question, the referring court asks if the term ‘deterioration of the status of a body of groundwater’ in Article 4(1)(b)(i) of the WFD must be interpreted as meaning that a deterioration of the chemical status of a body of groundwater exists as soon as at least one environmental quality standard for one parameter is exceeded for project-related reasons and that irrespective of that, if the relevant threshold for one pollutant has already been exceeded, any additional (measurable) increase of the concentration constitutes a deterioration.

54. In *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433), the Court held, on the basis of a literal and contextual reading of Article 4(1)(a)(i) of the WFD and in the light of the objectives of this directive, that the notion of ‘deterioration of the status’ of a body of surface water in this provision must be interpreted as meaning that ‘there is deterioration as soon as the status of at least one of the quality elements, within the meaning of Annex V to the directive, falls by one class, even if that fall does not result in a fall in classification of the body of surface water as a whole’.³⁴ In addition, the Court pointed out that ‘if the quality element concerned, within the meaning of that annex, is already in the lowest class, any deterioration of that element constitutes a “deterioration of the status” of a body of surface water, within the meaning of Article 4(1)(a)(i)’.³⁵

55. It is true that, unlike bodies of surface water — for which the WFD provides for a scale of five ecological status classes — the directive only distinguishes between good and poor status with regard to the quantitative and chemical status of groundwater. I consider, however, that the interpretation of the notion of ‘deterioration of the status’ of bodies of water within the meaning of the Water Framework Directive should be rather similar, irrespective of whether it is surface water or groundwater.

56. Indeed, in addition to the environmental objectives of the WFD which are clearly similar under Article 4(1) for surface water and groundwater, the basis of the literal interpretation and the contextual argument used by the Court to support its interpretation of Article 4(1)(a)(i) of the WFD can also be applied by analogy to Article 4(1)(b)(i).³⁶

57. First, in the same manner as Article 4(1)(a)(i), the wording of Article 4(1)(b)(i) of the WFD supports an interpretation that is independent of the specifications of Annex V since both provisions expressly state that deterioration of the status of *all* bodies of water — whether surface or groundwater — should be prevented. As it happens, only Article 4(1)(a)(ii) and (iii) and (b)(ii) of the WFD refer to Annex V, but these provisions concern the obligation to *enhance* the status of bodies of water. However, the obligation to prevent deterioration and the obligation to enhance are two distinct objectives.³⁷ In addition, according to the definition in Article 2(19) of the WFD — similar to that of Article 2(17) of the same directive for surface water status — groundwater status is the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status.

58. Just as with Article 4(1)(a)(i) of the WFD, therefore, the wording of Article 4(1)(b)(i) also imposes, in a general manner, the obligation to prevent the deterioration of groundwater status without referring to the classification arising from Annex V.

³⁴ Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 70).

³⁵ Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 70).

³⁶ See, to that effect, Waller, H., ‘Case C-461/13, Bund für Umwelt und Naturschutz Deutschland e.V.: Could This Case Change the Current of EU Environmental Law or Will It Just Wash Over?’, *European Law Reporter*, 2016, No 2, pp. 53 to 66, esp. p. 60.

³⁷ See, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 39).

59. Second, it is true that, whereas the assessment of surface water status is based on an analysis of the ecological status which covers five classes, the assessment of groundwater status is based on an analysis of the quantitative status and chemical status, with reference to Tables 2.1.2 and 2.3.2 of Annex V.³⁸

60. However, as I have just observed, neither Article 4(1)(a)(i) of the WFD nor Article 4(1)(b)(i) refers to Annex V. In those circumstances, as with the notion of ‘deterioration of the status’ of a body of surface water, the notion of ‘deterioration of the status’ of a body of groundwater must also be considered as a concept of general scope. The classes and conditions laid down in that regard in these tables are, consequently — using the words of the Court in *Bund für Umwelt und Naturschutz Deutschland* — ‘merely an instrument which limits the discretion of the Member States when determining the quality elements which reflect the actual status of a specific body of water’.³⁹

61. Third, account must also be taken of Article 4(5)(c) of the WFD which expressly lays down a prohibition of all further deterioration as regards specific bodies of water for which the Member States may aim to achieve less stringent environmental objectives.⁴⁰

62. In those circumstances, as the Court held with regard to ‘bodies of water’ *in general*, the notion of ‘deterioration’ must be interpreted by reference to a quality element or a substance because ‘the obligation to prevent deterioration of the status of a body of water retains all its practical effect, since it encompasses all changes liable to undermine achievement of the principal objective of [the WFD]’.⁴¹ That interpretation should prevail all the more so in the case of a body of groundwater that only knows the status of ‘good’ or ‘poor’, whereas for surface waters, there are five classes of status.

63. In addition, the Court has already stated, in a similarly general way, that, ‘as regards the criteria for concluding that there is a deterioration of the status of a body of water, it is clear from the scheme of Article 4 of [the WFD], in particular Article 4(6) and (7), that a deterioration of the status of a body of water, even if transitory, is authorised only subject to strict conditions. It follows that the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be low’.⁴²

64. In that context, it must be noted that, according to Article 2(25) of the WFD, ‘good groundwater chemical status’ is the chemical status of a body of groundwater, which meets *all the conditions set out in table 2.3.2 of Annex V*. That means that the chemical composition of the body of groundwater is such that the concentrations of pollutants do not exhibit the effects of saline or other intrusions, do not exceed the quality standards and threshold values laid down in Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration⁴³ and are not such as would result in failure to achieve the environmental objectives specified under Article 4 for associated surface waters nor any significant diminution of the ecological or chemical quality of such bodies nor in any significant damage to terrestrial ecosystems which depend directly on the body of groundwater.

38 See Article 2(25) and (28) of the Water Framework Directive.

39 Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 61).

40 See, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 64).

41 Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 66).

42 Judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 67).

43 OJ 2006 L 372, p. 19.

65. In accordance with Article 17 of the WFD, Article 3(1) of Directive 2006/118 therefore provides criteria for assessing groundwater chemical status. Under this provision, Member States shall use groundwater quality standards as referred to in Annex I and threshold values which they shall set in accordance with the procedure laid down in Annex II, Part A for the pollutants, groups of pollutants and indicators of pollution which have been identified as contributing to the characterisation of bodies or groups of bodies of groundwater as being at risk, taking into account at least the list contained in Annex II, Part B.

66. In those circumstances, it seems to me that the notion of ‘deterioration of the status’ of a body of groundwater referred to in Article 4(1)(b)(i) of the Water Framework Directive must be interpreted as meaning that there is deterioration of the chemical status of a body of groundwater if, as a result of the project, an environmental quality standard within the meaning of Annex I to Directive 2006/118 or a threshold value of a Member State within the meaning of Annex II to the same directive is exceeded for at least one pollutant or if the other conditions set out in Table 2.3.2 of Annex V to the WFD are not complied with. However, if the body of groundwater is already in the lowest class within the meaning of Annex V to the WFD, any subsequent increase in the concentration of a pollutant that exceeds the environmental quality standard or threshold value set by the Member State would necessarily constitute a deterioration. In this case, an increase in the concentration of another pollutant also constitutes a deterioration if it exceeds the environmental quality standard or the threshold value set by the Member State.

67. Indeed, if an adverse change in one of the parameters of the status of a body of groundwater classified as poor could not be qualified as deterioration, that would imply acceptance of further deterioration in the status of groundwater and would also exclude waters in the lowest class from the scope of the obligation to prevent deterioration in their status. Since the classification of the body of groundwater depends on the worst value of the parameters used, all other values could be lowered without any legal effect. Consequently, this would lead to the approval of projects that run counter to the obligation, referred to in the WFD, to prevent deterioration and to improve water status and, as such, would deprive the WFD of its effectiveness.⁴⁴

D. The fourth question

68. By its fourth question, the referring court asks, in substance, if Article 4 of the WFD must be interpreted as meaning that all members of the public concerned by a project who assert that the approval of a project would infringe their rights are also entitled to bring judicial proceedings asserting breaches of the ban on the deterioration of water and the requirement for improvement in water quality. In the alternative, the referring court asks if that provision must be interpreted as meaning that at least such claimants who maintain domestic wells for their private water supply in geographical proximity to the planned road are entitled to bring judicial proceedings asserting breaches of the ban on the deterioration of water and the requirement for improvement.

69. It cannot be disputed that Article 4 of the WFD plays a part in the attainment of the main objective pursued by the measures taken under that directive, which, as is clear from Article 1 of that directive, read in the light of recitals 11, 19 and 27 thereof, is to protect the environment and, in particular, to maintain and improve the quality of the aquatic environment of the European Union.⁴⁵

⁴⁴ See, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 63).

⁴⁵ See, to that effect, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 33).

70. In those circumstances, the Court has already held that ‘it would be incompatible with the binding effect conferred by Article 288 TFEU on a directive to exclude, in principle, the possibility that the obligations which it imposes may be relied on by the persons concerned. The effectiveness of [the WFD] and its aim of protecting the environment, ... require that individuals or, where appropriate, a duly constituted environmental organisation be able to rely on it in legal proceedings and that the national courts be able to take that directive into consideration as an element of EU law in order, inter alia, to review whether a national authority that has granted a permit for a project that may have an effect on the water status has complied with its obligations under Article 4 of the directive, in particular preventing the deterioration of bodies of water, and has thus kept within the limits of the discretion granted to the competent national authorities by that provision’.⁴⁶

71. That consideration applies particularly in respect of a directive which is intended to protect public health.⁴⁷ The Water Framework Directive shares this objective since good water quality is vital for the general public water supply.⁴⁸

72. In that context, it must also be noted that, ‘when they set out detailed procedural rules for legal actions intended to ensure the protection of rights conferred by the WFD, the Member States must ensure compliance with the right to an effective remedy and to a fair hearing, enshrined in Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection’.⁴⁹

73. This is why I sought to demonstrate in the analysis of the first question asked by the referring court that even though Member States enjoy a significant discretion to determine what constitutes ‘sufficient interest’ or ‘impairment of a right’, the provisions of Article 11 of the EIA Directive relating to the right of members of the public concerned by the decisions, acts or omissions which fall within that directive’s scope to bring actions cannot be interpreted restrictively.⁵⁰ The wording of Article 11(3) of the EIA Directive and the second paragraph of Article 9(2) of the Aarhus Convention confirm that the discretion enjoyed by the Member States is limited by the need to respect the objective of ensuring wide access to justice for the public concerned.⁵¹

74. In this context, the Court has recently ruled that, ‘at least the natural or legal persons *directly concerned* by an infringement of provisions of a directive must be in a position to require the competent authorities to observe such obligations [as those enshrined in Article 4 of the WFD], if necessary by pursuing their claims by judicial process’.⁵² However, since this obligation to be ‘directly concerned’ constitutes a restriction to the access to justice, it must be interpreted restrictively. One may also observe that the Court has not made a specific, irrefutable risk to health a condition for bringing such proceedings.⁵³

46 Judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 34 and the case-law cited).

47 See, to that effect, judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 37); of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraph 94), and of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382, paragraph 55).

48 See recital 24 of the WFD according to which ‘good water quality will contribute to securing the drinking water supply for the population’. See also Article 1(d) of the WFD according to which that directive ensures the progressive reduction of pollution of groundwater and prevents its further pollution, defined in Article 2(33) of the WFD as ‘the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health ...’.

49 Judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 87).

50 See, to that effect, judgment of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraphs 38 and 40).

51 See, to that effect, judgment of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraph 39).

52 Judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:824, paragraph 32). Emphasis added.

53 See, to that effect, Opinion of Advocate General Kokott in *Wasserleitungsverband Nördliches Burgenland and Others* (C-197/18, EU:C:2019:274, point 54).

75. Accordingly, in circumstances such as those in the main proceedings, I am therefore of the opinion that claimants who maintain domestic wells for their private water supply in geographical proximity to the planned road are clearly directly concerned by the risk of a deterioration in the water quality of the watercourses concerned and can, as such, rely on Article 4 of the WFD. On the other hand, if the project in question is likely to have an impact on the water consumed by persons using the public water-supply network or if they are specially affected in another way by the project, they also seem to me to be sufficiently concerned to be allowed to rely on Article 4 of the WFD to bring actions for breach of the prohibition of water deterioration.

76. Accordingly, in the light of the foregoing considerations, I conclude that Article 4 of the WFD must be interpreted as meaning that persons maintaining domestic wells for their private water supply or using a public water-supply network likely to be affected by the project concerned or otherwise specially affected by this project, are directly concerned by the risk of deterioration of the bodies of water involved and may, as such, invoke Article 4 of the WFD to bring judicial proceedings asserting breach of the prohibition of water deterioration.

VI. Conclusion

77. Accordingly, I propose that the Court should answer questions referred by the Bundesverwaltungsgericht (Federal Administrative Court, Germany) as follows:

- (1) Article 11(1)(b) of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment does not preclude a provision of national law according to which a claimant, who is not recognised as an environmental association, is entitled to apply for the annulment of a decision, act or omission which falls within that directive's scope due to a procedural defect only if he demonstrates that he has been deprived himself of at least one of the procedural guarantees provided for in that directive, in particular those provided for in Article 6. On the other hand, Article 11(1)(b) of Directive 2011/92 precludes a provision of national law which makes an individual's right to seek the annulment of a decision, act or omission falling within that directive's scope conditional on having been deprived of the right of participation in the decision-making process on the ground that the procedural guarantees provided for in that directive are not considered to be substantive individual rights.
- (2) Article 4(1)(a)(i) to (iii) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as meaning that it does not only include substantive criteria for examination but also requires that the assessment relating to the prohibition of deterioration of bodies of surface water precedes the adoption of the decision approving the plan, regardless of the time of adoption or the complexity of the document relevant for such control.
- (3) The notion of 'deterioration of the status' of a body of groundwater referred to in Article 4(1)(b)(i) of Directive 2000/60 must be interpreted as meaning that there is deterioration of the chemical status of a body of groundwater if, as a result of the project, an environmental quality standard within the meaning of Annex I to Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration or a threshold value of a Member State within the meaning of Annex II to the same directive is exceeded for at least one pollutant or if the other conditions set out in Table 2.3.2 to Annex V to Directive 2000/60 are not complied with. However, if the body of groundwater is already in the lowest class within the meaning of Annex V to Directive 2000/60, any subsequent increase in the concentration of a pollutant that exceeds the environmental quality standard or

threshold value set by the Member State shall constitute a deterioration. In this case, an increase in the concentration of another pollutant also constitutes a deterioration if it exceeds the environmental quality standard or the threshold value set by the Member State.

- (4) Article 4 of Directive 2000/60 must be interpreted as meaning that persons maintaining domestic wells for their private water supply or using a public water-supply network likely to be affected by the project concerned or otherwise specially affected by this project, are directly concerned by the risk of deterioration of the bodies of water concerned and may, as such, invoke Article 4 of Directive 2000/60 to bring judicial proceedings asserting breach of the prohibition of water deterioration.