



# Reports of Cases

OPINION OF ADVOCATE GENERAL  
KOKOTT  
delivered on 8 November 2012<sup>1</sup>

**Case C-420/11**

**Jutta Leth**  
v  
**Republik Österreich**  
and  
**Land Niederösterreich**

(Reference for a preliminary ruling from the Oberster Gerichtshof (Austria))

(Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Consent for a project given without an appropriate assessment of its effects on the environment — Objectives of the assessment of the effects of certain public and private projects on the environment — Inclusion of protection of individuals against loss of value)

## **I – Introduction**

1. Where the environmental effects of a project have to be assessed pursuant to the EIA Directive,<sup>2</sup> but no such assessment is carried out, the project may not be implemented.<sup>3</sup> The Court has held that the Member State concerned is likewise required to make good any harm caused by the failure to carry out an environmental impact assessment.<sup>4</sup> However, does this right also include damages for loss of value of a house resulting from the implementation of a project which has not been assessed? That is the question to be resolved in the present case.

2. The starting point is a property the value of which is affected by aircraft noise from a nearby airport. That airport was repeatedly expanded without an environmental impact assessment after the EIA Directive entered into force and air traffic increased considerably.

3. The uncertainties in the request for a preliminary ruling regarding State liability for this harm are based primarily on the objective of protection pursued by the EIA Directive, that is to say, whether the infringement of a directive designed to prevent environmental harm can also result in compensation for economic harm. In this regard, the regulatory nature of the EIA Directive is of importance. That directive contains only procedural rules and no substantive requirements as to the projects to be assessed.

1 — Original language: German.

2 — Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17). The former directive was repealed and codified by Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and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 (OJ 2012 L 26, p. 1).

3 — See, to that effect, judgment of 28 February 2012 in Case C-41/11 *Inter-Environnement Wallonie and Terre wallonne*, paragraphs 46 and 47.

4 — Case C-201/02 *Wells* [2004] ECR I-723, paragraph 66.

## II – Legal framework

4. The EIA Directive contains no rules on damages. However, Article 3 sets out the subject-matter of the environmental impact assessment:

‘The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with the Articles 4 to 11, the direct and indirect effects of a project on the following factors:

- human beings, fauna and flora;
- soil, water, air, climate and the landscape;
- material assets and the cultural heritage;
- the interaction between the factors mentioned in the first, second and third indents.’

5. Article 5(1) and (3) of the EIA Directive stipulates the information which the developer must supply:

‘1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment ..., Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information ...

2. ...

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

- ...
- the data required to identify and assess the main effects which the project is likely to have on the environment;
- ...’

6. Article 6 of the EIA Directive governs public participation. Article 6(3) concerning public information is of particular relevance:

‘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 ..., 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.’

7. Paragraphs 3 and 4 of Annex IV to the EIA Directive specify the information referred to in Article 5:

‘3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description of the likely significant effects of the proposed project on the environment resulting from:

- the existence of the project,
- the use of natural resources,
- the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the developer of the forecasting methods used to assess the effects on the environment.’

8. With regard to the term ‘description’ appearing in paragraph 4 of Annex IV to the EIA Directive, a footnote states that ‘[this] description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project’.

### III – Facts and reference for a preliminary ruling

9. Mrs Leth owns a house near Vienna-Schwechat airport (Austria). Whilst various versions of the EIA Directive were in force, this airport was altered by a number of extensions without the environmental impacts being assessed pursuant to the directive.

10. Mrs Leth is now claiming from the Austrian State and from *Land* Niederösterreich (State of Lower Austria) damages for the loss of value of her property resulting from aircraft noise on the ground that the environmental effects of the expansion projects ought to have been assessed pursuant to the directive.

11. Without having examined the need for one or more environmental impact assessments, the Oberster Gerichtshof (Austrian Supreme Court) has referred the following questions in these proceedings:

‘Is Article 3 of [the EIA directive] to be interpreted as meaning that:

1. the term “material assets” covers only their substance or also their value;
2. the environmental impact assessment serves also to protect an individual against pecuniary damage as a result of a decrease in the value of his property?’

12. In these proceedings, Mrs Leth, *Land* Niederösterreich, the Czech Republic, Ireland, the Hellenic Republic, the Italian Republic, the Republic of Latvia, the Republic of Austria, the United Kingdom of Great Britain and Northern Ireland and the European Commission have submitted written observations. With the exception of Italy and Latvia, they also took part in the hearing held on 17 October 2012.

## IV – Legal appraisal

### A – First question: the term ‘material assets’

13. By the first question, the Oberster Gerichtshof seeks to ascertain whether the term ‘material assets’ in Article 3 of the EIA Directive covers only the substance of the relevant assets or also their value.

14. Article 3 of the EIA Directive defines the content of the environmental impact assessment. It identifies, describes and assesses the effects of a project on various factors, including material assets.

15. Consequently, the first question essentially seeks to establish whether the environmental impact assessment must also include the effects which the project under examination has on the value of material assets.

16. However, the main proceedings relate, not to the necessary content of an environmental impact assessment, but to whether the complete absence of such an assessment can give rise to damages. For that reason, Ireland considers this question to be hypothetical and thus inadmissible.

17. None the less, the interpretation of the term ‘material assets’ is, indirectly, entirely linked to the central question raised in the preliminary-ruling proceedings, namely the extent to which an infringement of the EIA Directive can give rise to an entitlement to damages for the loss of value of material assets. If the environmental impact assessment is required also to examine the potential loss of value, there would be stronger grounds for such a requirement to make good any harm than if the assessment could ignore such harm. The Court ought for that reason to answer this question.

18. The Commission correctly argues that the term ‘material assets’ is not necessarily limited – as it is in the law of various Member States – to the substance of the assets concerned. The need for uniform application of EU law requires that the terms of a provision which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope should normally be given an autonomous and uniform interpretation throughout the European Union; that interpretation must take into account the context of the provision and the purpose of the legislation in question.<sup>5</sup>

19. The Commission is also correct in its view that, under Article 3 of the EIA Directive, the effects of aircraft noise on the human utilisation of buildings have to be examined, as such utilisation constitutes an interaction between the factors ‘human’ and ‘assets’, of which account has to be taken in the application of that provision.

20. However, as various parties rightly argue, an extension of the assessment to the *value* of material assets is neither consistent with the purpose of the EIA Directive nor set out in the wording thereof.

21. According to Article 1(1) of the EIA Directive and the first and sixth recitals in the preamble thereto, its objective is to assess the environmental effects of projects. According to Article 5 and Annex IV, information thereon is to be supplied. It would therefore appear that account should be taken only of the effects on material assets which might also be significant in terms of the natural environment. Noise is a good example in this regard. If natural habitats are disturbed through noise, this is a matter requiring examination.<sup>6</sup> The same must apply in the case where material assets used by humans, such as houses and gardens, are affected by noise.

5 — Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43.

6 — See Case C-404/09 *Commission v Spain* [2011] ECR I-11853, paragraph 84 et seq.

22. The criteria for deciding whether or not the less significant projects listed in Annex II require an environmental impact assessment also militate against extending the assessment to the loss of value of material assets. Those criteria are laid down in Annex III and refer to factors such as the use of natural resources, the production of waste, pollution and nuisances, the risk of accidents or the absorption capacity of the natural environment, but not the economic consequences of those effects.

23. However, in support of extending the environmental impact assessment to economic effects, the Commission argues that the Court has already ruled on several occasions that the EIA Directive has a wide scope and a very broad purpose.<sup>7</sup> However, that case-law relates to the environmental effects of projects.<sup>8</sup> There are no grounds at all to support an extension to economic consequences.

24. Therefore, a distinction must be drawn between effects on the environment and economic effects. Even where the latter can be attributed to environmental effects, they are no longer covered by the EIA Directive's objective of ensuring that the environmental effects be assessed.

25. Thus, the answer to the first question must be that the environmental impact assessment under Article 3 of the EIA Directive does not include the effects of the project under examination on the value of material assets.

#### B – Second question – pecuniary damage and the EIA Directive

26. The second question goes to the heart of the case in the main proceedings. The Oberster Gerichtshof seeks to establish whether Article 3 of the EIA Directive is to be interpreted as meaning that the environmental impact assessment serves also to protect an individual against pecuniary damage as a result of a decrease in the value of his property.

27. Unlike, for example, Article 2(1)(c) of Directive 89/665/EEC<sup>9</sup> on public procurement, the EIA Directive contains no indication that failure to fulfil the obligation to assess environmental effects is to give rise to damages.

28. However, the principle whereby a State must be liable for loss and damage caused to individuals as a result of breaches of EU law for which the State can be held responsible is inherent in the legal system established by the Treaties.<sup>10</sup> Accordingly, the Court found in *Wells* – without assessing this in detail – that the Member State concerned is required to make good any harm caused by the failure to carry out an environmental impact assessment.<sup>11</sup> Nevertheless, this finding cannot be understood as meaning that the conditions for Member States to be liable for a breach of EU law do not have to be satisfied in the case of the EIA Directive.

7 — Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 31; Case C-435/97 *WWF and Others* [1999] ECR I-5613, paragraph 40; and Case C-2/07 *Abraham and Others* [2008] ECR I-1197, paragraphs 32 and 42.

8 — *Abraham*, cited in footnote 7, paragraph 43.

9 — Council Directive of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Council Directive 92/50/EEC of 18 June 1992 (OJ 1992 L 209, p. 1); see, in this regard, Case C-568/08 *Combinatie Spijker Infrabouw-De Jonge Konstruktie and Others* [2010] ECR I-12655, paragraph 87.

10 — Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 35; Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 31; and Case C-429/09 *Fuß* [2010] ECR I-12167, paragraph 45.

11 — *Wells*, cited in footnote 4, paragraph 66.

29. According to settled case-law, recognition of the right of individuals harmed to compensation for damage is subject to three conditions: the rule of EU law infringed must be intended to confer rights on those individuals; the breach of that rule must be sufficiently serious; and there must be a direct causal link between the breach and the loss or damage sustained by the individuals.<sup>12</sup>

30. The request for a preliminary ruling targets the first of these conditions. It is necessary to clarify whether the obligation to carry out an environmental impact assessment laid down in the EIA Directive is intended to confer rights on individuals in Mrs Leth's situation.

31. Therefore, I would like first to set out the extent to which individuals can rely on the EIA Directive (see 1 below). I will then deal with the objective of protection pursued by the EIA Directive (see 2 below) and finally examine the extent to which the fact that the EIA Directive lays down only the procedure for authorising projects, but not the substantive conditions, is relevant to the purpose of the rule which has been breached (see 3 below).

#### 1. The possibility of relying on the EIA Directive

32. A basic requirement for a rule to intend to confer rights on individuals who have been adversely affected is that individuals are able to rely on that rule.

33. In this regard, it is established that individuals can invoke the obligation to conduct an environmental impact assessment laid down in Article 2(1) of the EIA Directive, read in conjunction with Articles 1(2) and 4 thereof.<sup>13</sup> Consequently, the EIA Directive confers on members of the public concerned a right to require the competent authorities to assess the environmental effects of the relevant project and to express their opinion thereon.

34. This distinguishes the EIA Directive from the provisions on bank supervision which formed the subject-matter of the *Paul* judgment cited by a number of parties. The provisions of the directive examined in that case cannot give rise to a right to damages for the customers of an insolvent bank. Unlike in the case of the EIA Directive, individuals also cannot rely on the provisions examined in *Paul*.<sup>14</sup> Furthermore, there were special rules on the protection of bank customers' financial interests, namely the deposit guarantee.<sup>15</sup> The EIA Directive does not contain any comparable provision.

#### 2. The objective of protection pursued by the EIA Directive

35. The intervening Member States and *Land* Niederösterreich, however, take the view that a distinction must be drawn between reliance on the provisions of EU law and rights within the meaning of the case-law on liability resulting from breach of EU law. As the question referred by the Oberster Gerichtshof already implies, they assume that this depends on whether the EIA Directive is intended to confer on individuals a right to protection against economic harm. And they have doubts as to whether such protection is intended.

12 — Case C-470/03 *AGM-COSMET* [2007] ECR I-2749, paragraph 78; *Fuß*, cited in footnote 10, paragraph 47; *Combinatie Spijker Infrabouw-De Jonge Konstruktie and Others*, cited in footnote 9, paragraph 87; and Case C-94/10 *Danfoss and Sauer-Danfoss* [2011] ECR I-9963, paragraph 33.

13 — *Wells*, cited in footnote 4, paragraph 61. See also, to this effect, *WWF*, cited in footnote 7, paragraph 70 et seq., and *Linster*, cited in footnote 5, paragraph 33 et seq.

14 — Case C-222/02 *Paul and Others* [2004] ECR I-9425, paragraphs 30 and 42 et seq., and the Opinion of Advocate-General Stix-Hackl in that case, points 124, 126 and 129.

15 — *Paul*, cited in footnote 14, paragraph 27.

36. At first sight, the answer to the first question proposed above militates against the objective of protection pursued by the EIA Directive also including the prevention of economic harm. The examination of environmental effects is naturally aimed primarily at minimising environmental harm. However, that does not preclude the inclusion of *specific economic harm* within the objective of protection pursued by the EIA Directive since such harm is merely a different expression of particular aspects of the environmental effects.

37. Thus, aircraft noise in connection with the expansion of airport capacity must be examined pursuant to Articles 3 and 5(1) of the EIA Directive, in conjunction with paragraphs 3 and 4 of Annex IV thereto, because it has effects on human beings, namely the population affected. Similar effects on the natural environment must unquestionably be taken into account. Where noise would make a habitat less attractive to a particular species and it would therefore use it less, that aspect has to be examined.<sup>16</sup>

38. Where the value of property drops as a result of aircraft noise, the reason for this economic effect is the fact that the property is less attractive to human beings. A distinction must be drawn between such harm and harm which does not result from the environmental effects of the project, for example certain competitive disadvantages. The latter harm is not connected with the objective of protection pursued by the EIA Directive.

39. Furthermore, linking an infringement of the EIA Directive to claims for damages is consistent with the broad interpretation which has been placed on this directive in relation to its legal effects. For example, in connection with actions relating to defects of an environmental impact assessment the national courts must adopt, subject to the limits of procedural autonomy, the measures, provided for by their national law, that are appropriate for preventing such a project from being implemented in the absence of a necessary environmental assessment.<sup>17</sup> Also in a consent procedure which does not provide in principle for an environmental impact assessment, an assessment which was not carried out in the earlier procedure concerning the same overall project must be carried out subsequently.<sup>18</sup> The possibility of basing claims for damages on infringement of the EIA Directive would also strengthen the working of the directive.<sup>19</sup> The finding in the *Wells* judgment that a failure to carry out an environmental impact assessment gives rise to claims in respect of State liability<sup>20</sup> must be placed in this context.

40. The prevention of economic harm resulting from aircraft noise is therefore covered by the objective of protection pursued by the EIA Directive.

### 3. The necessary qualification of the purpose of the breached rule

41. However, it is uncertain whether the purpose of the breached rules requires further qualification in order to give rise to entitlement to damages.

42. It is true that Article 3 – as the Commission points out – requires the *assessment* of environmental effects and that under Article 8 the results of the examination are to be taken into account in the consent procedure. However, the EIA Directive does not contain any rules as to which projects can at all be carried out. In particular, contrary to the view taken by the Commission, the requirement of an

16 — See *Commission v Spain*, cited in footnote 6.

17 — See, to this effect, *Inter-Environnement Wallonie and Terre wallonne*, cited in footnote 3.

18 — Case C-275/09 *Brussels Hoofdstedelijk Gewest and Others* [2011] ECR I-1753, paragraph 37.

19 — See Case C-453/99 *Courage and Crehan* [2001] ECR I-6297, paragraphs 25 to 27, and Joined Cases C-295/04 to C-298/04 *Manfredi and Others* [2006] ECR I-6619, paragraph 60, concerning claims for damages for breach of the law on concerted practices.

20 — Cited in footnote 4.

assessment of environmental effects cannot be understood as an obligation to conduct an appraisal of environmental effects with other factors. For that reason, the EIA Directive does not preclude the implementation of a project even in the case where the environmental impact assessment establishes that there are significant negative effects on the environment.

43. There is evidence to suggest that this procedural nature of the EIA Directive may affect the bringing of claims based on State liability. This evidence arises from the case-law on the creation of non-contractual liability on the part of the *European Union*, which also requires a breach of a rule of law that is intended to confer rights on individuals.<sup>21</sup>

44. In this connection, the Court has already found that inadequacies in the statement of the reasons upon which a legal provision is based are not sufficient to make the European Union liable. As far as the system of legal remedies is concerned, the requirement of a statement of the reasons upon which measures adopted by the institutions are based is designed to enable the Court to exercise its powers of review of the legality of such measures in the context of Article 263 TFEU for the benefit of individuals to whom that remedy is made available by the Treaty.<sup>22</sup> Therefore, the obligation to state reasons has primarily an ancillary function, making it possible to allow compliance with other legal provisions, breach of which by the institutions might give rise to claims for damages.

45. Furthermore, the aim of the system of the division of powers between the various EU institutions is to ensure that the balance between the institutions provided for in the Treaty is maintained, and not to protect individuals. Consequently, a failure to observe the balance between the institutions cannot be sufficient on its own to engage the European Union's liability vis-à-vis the individuals concerned.<sup>23</sup> Nevertheless, individuals may rely on the institution's lack of competence to act in order to call into question the validity of an EU measure.<sup>24</sup>

46. What these cases have in common is that a breach of the relevant legal rule cannot give rise to the harm in question, since the measure which gave rise to it can be adopted again with a statement of sufficient reasons or by the competent institution. The mere possibility that the competent authorities might, in averting the error, have taken a different decision, exercising any existing discretion, is not sufficient to give rise to claims for damages, given that there is no right to have the discretion exercised in a particular way.<sup>25</sup> Consequently, no unconditional right to the avoidance of harm can be derived either from the obligation to state reasons or from the institutional balance.

47. Although these are aspects which should also be relevant in the context of causality, the Court apparently also regards them as essential characteristics of the rules concerned. They are, for that reason, by nature incapable of giving rise to claims for damages.

48. Likewise, the EIA Directive does not establish a right to be spared particular environmental effects, such as loud aircraft noise. Therefore, the mere fact that environmental effects were permitted in breach of the EIA Directive does not, by itself, create an obligation to make good any harm resulting from those effects.

21 — Case C-352/98 P *Bergaderm and Goupil v Commission* [2000] ECR I-5291, paragraph 41; Joined Cases C-120/06 P and C-121/06 P *FIAMM and Others v Council and Commission* [2008] ECR I-6513, paragraph 173; and judgment of 19 April 2012 in Case C-221/10 P *Artogodan v Commission and Germany*, paragraph 80.

22 — Case 106/81 *Kind v EEC* [1982] ECR 2885, paragraph 14, and Case C-119/88 *AERPO and Others v Commission* [1990] ECR I-2189, paragraph 20.

23 — Case C-282/90 *Vreugdenhil v Commission* [1992] ECR I-1937, paragraph 20 et seq., and *Artogodan v Commission and Germany*, cited in footnote 21, paragraph 81.

24 — See, for example, Case C-39/03 P *Commission v Artogodan and Others* [2003] ECR I-7885, paragraph 52.

25 — See to this effect, in relation to the protection of legitimate expectations, Joined Cases C-37/02 and C-38/02 *Di Lenardo and Dilexport* [2004] ECR I-6911, paragraph 70; Joined Cases C-182/03 and C-217/03 *Belgium and Forum 187 v Commission* [2006] ECR I-5479, paragraph 147; Case C-443/07 P *Centeno Mediavilla and Others v Commission* [2008] ECR I-10945, paragraph 91; and Case C-496/08 P *Angé Serrano and Others v Parliament* [2010] ECR I-1793, paragraph 93.

49. However, the EIA Directive does confer on the public concerned a right to have the effects of the relevant project on the environment assessed and to express their opinion thereon.

50. Public participation serves primarily to identify environmental effects in good time, but it also has a *warning function* vis-à-vis the public concerned. Under Article 6(3) of the EIA Directive, *information* on the environmental effects of the project also forms part of public participation. The competent authorities must make available all information which the developer is required to provide pursuant to Article 5 and all other relevant information in their possession.

51. Therefore, regardless of whether individuals express an opinion on the project, they can obtain information on its environmental effects directly from the environmental impact assessment or through the media. Consequently, they can adapt their future behaviour, for example by taking steps to avoid potential harm. In the directive this function is evident particularly from the fact that under Article 9 the public is to be informed of the decision at the end of the consent procedure and of the main reasons therefor.

52. A breach of the EIA Directive which adversely affects this warning function must in principle be capable of giving rise to claims for damages.

53. It is also possible to imagine, for example, an environmental impact assessment which incorrectly rules out the possibility that a project will introduce certain toxic substances into the environment. If members of the public concerned therefore fail to take preventative measures, but subsequently sustain harm as a result of the corresponding emissions, this might render the State liable. The same must also be true where there is a failure to carry out a necessary environmental impact assessment which would have informed the public of such risks. In such cases the errors in applying the EIA Directive have a sufficient causal link with the harm which subsequently occurs.

54. In the case of increasing aircraft noise it is possible to imagine that, with sufficient prior warning, people would opt not to settle in the affected areas or at least ensure that there was appropriate noise abatement at the time of construction of buildings. However, if there is no such warning because the required environmental impact assessment was not carried out, the right to bring claims for damages cannot be discounted.

55. There is nothing in the request for a preliminary ruling to show that the harm disputed in the main proceedings results from a possible failure of the environmental impact assessment to perform a warning function. However, it is ultimately for the national courts to clarify the facts in that respect.

56. The answer to the second question must therefore be that the mere fact that environmental effects were permitted in breach of the EIA Directive does not, by itself, create an obligation to make good any harm caused by those effects. Rather, in order for claims for damages to exist, the public concerned must, in addition, not have been adequately notified of the environmental effects to be expected because of errors in the application of the EIA Directive.

## V – Conclusion

57. The economic consequences of environmental effects do not have to be assessed under the EIA Directive. However, the economic consequences of errors in the application of the EIA Directive can give rise to claims for damages.

58. I therefore propose that the Court answer the questions referred for a preliminary ruling as follows:

- (1) An environmental impact assessment under Article 3 of Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC, does not include the effects of the project under examination on the value of material assets.
- (2) The mere fact that environmental effects were permitted in breach of Directive 85/337 does not, by itself, create an obligation to make good any harm caused by those effects. Rather, in order for claims for damages to exist, the public concerned must, in addition, not have been adequately notified of the environmental effects to be expected because of errors in the application of the Directive.