



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 28 March 2019¹

Case C-197/18

**Wasserleitungsverband Nördliches Burgenland,
Robert Prandl,
Gemeinde Zillingdorf,
Intervening party:**

**Bundesministerin für Nachhaltigkeit und Tourismus, formerly Bundesminister für Land und
Forstwirtschaft, Umwelt und Wasserwirtschaft**

(Request for a preliminary ruling from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria))

(Reference for a preliminary ruling — Environment — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Risk of limit values and/or alert thresholds being exceeded — Obligation to establish an action programme — Direct effect — Rights of persons concerned)

I. Introduction

1. The European Union adopted rules to counter water pollution caused by nitrates as early as 1991, namely the Waste Water Directive,² which regulates the construction and operation of waste-water treatment plants in particular, and the Nitrates Directive,³ which concerns nitrates from agriculture. The aim of those measures is first and foremost to protect ecosystems from excess nutrient supply. However, at the same time, health risks are also associated with nitrates, particularly in very young infants.⁴ The Drinking Water Directive⁵ therefore contains a limit value of 50 mg/l for nitrates, a value which also appears in the Nitrates Directive.

2. The applicants in the main proceedings, a water supplier, an individual and a municipality, are thus requesting measures to ensure that groundwater contains less than 50 mg/l of nitrates. The competent authorities, on the other hand, contest that the applicants have the right to request such measures. It is also disputed whether further measures are necessary and whether the relevant rules have direct effect.

¹ Original language: German.

² Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40).

³ Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1).

⁴ Umweltbundesamt (Federal Environment Agency, Germany) (<https://www.umweltbundesamt.de/faqs-zu-nitrat-im-grund-trinkwasser#textpart-4>).

⁵ Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32), as amended by Commission Directive (EU) 2015/1787 of 6 October 2015 amending Annexes II and III to Council Directive 98/83 on the quality of water intended for human consumption (OJ 2015 L 260, p. 6).

3. This case gives the Court another opportunity to deal with the question of who is able to rely on EU environmental legislation before national courts and it will be considered for the first time to what extent reliance on the Nitrates Directive is possible before those courts.

II. Legal framework

A. Aarhus Convention

4. Under paragraphs 4 and 5 of Article 2 ('Definitions') of the Aarhus Convention⁶

'4. "The public" means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organisations or groups;

5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; ...'

5. Article 3(6) of the convention concerns the relationship with existing rights:

'This Convention shall not require any derogation from existing rights of access to information, public participation in decision-making and access to justice in environmental matters.'

6. Article 9(3) of the convention provides for a right to institute legal proceedings:

'In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.'

B. EU law

1. Nitrates Directive

7. The sixth recital of the Nitrates Directive addresses the protective purpose of the Nitrates Directive:

'Whereas it is therefore necessary, in order to protect human health and living resources and aquatic ecosystems and to safeguard other legitimate uses of water, to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution. ...'

8. The 13th recital of the Nitrates Directive addresses the time frame for protection measures.

'Whereas it is recognised that the hydrogeology in certain Member States is such that it may be many years before protection measures lead to improvements in water quality'.

⁶ Convention on access to information, public participation in decision-making and access to justice in environmental matters of 1998 (OJ 2005 L 124, p. 4), approved by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).

9. Article 1 of the Nitrates Directive sets out its specific objectives:

‘This Directive has the objective of:

- reducing water pollution caused or induced by nitrates from agricultural sources and
- preventing further such pollution.’

10. ‘Pollution’ is defined in Article 2(j) of the Nitrates Directive as:

‘... the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.’

11. Under Article 3(1) of the Nitrates Directive, Member States are in principle to identify vulnerable zones:

‘Waters affected by pollution and waters which could be affected by pollution if action pursuant Article 5 is not taken shall be identified by the Member States in accordance with the criteria set out in Annex I.’

12. However, Article 3(5) of the Nitrates Directive provides for an exception:

‘Member States shall be exempt from the obligation to identify specific vulnerable zones, if they establish and apply action programmes referred to in Article 5 in accordance with this Directive throughout their national territory.’

13. According to the request for a preliminary ruling, Austria applies the exception provided for in Article 3(5) of the Nitrates Directive.

14. Article 5 of the Nitrates Directive lays down rules on action programmes:

‘1. ... Member States shall, for the purpose of realising the objectives specified in Article 1, establish action programmes in respect of designated vulnerable zones.

2. ...

3. ...

4. Action programmes shall be implemented within four years of their establishment and shall consist of the following mandatory measures:

- (a) the measures in Annex III;
- (b) those measures which Member States have prescribed in the code(s) of good agricultural practice established in accordance with Article 4, except those which have been superseded by the measures in Annex III.

5. Member States shall moreover take, in the framework of the action programmes, such additional measures or reinforced actions as they consider necessary if, at the outset or in the light of experience gained in implementing the action programmes, it becomes apparent that the measures referred to in paragraph 4 will not be sufficient for achieving the objectives specified in Article 1. In selecting these measures or actions, Member States shall take into account their effectiveness and their cost relative to other possible preventive measures.

6. Member States shall draw up and implement suitable monitoring programmes to assess the effectiveness of action programmes established pursuant to this Article.

Member States which apply Article 5 throughout their national territory shall monitor the nitrate content of waters (surface waters and groundwater) at selected measuring points which make it possible to establish the extent of nitrate pollution in the waters from agricultural sources.

7. Member States shall review and if necessary revise their action programmes, including any additional measures taken pursuant to paragraph 5, at least every four years. They shall inform the Commission of any changes to the action programmes.'

15. Article 10(1) of the Nitrates Directive regulates the reporting obligation for Member States:

'Member States shall, in respect of the four-year period following the notification of this Directive and in respect of each subsequent four-year period, submit a report to the Commission containing the information outlined in Annex V.'

16. Annex I to the Nitrates Directive lays down the criteria for defining vulnerable zones. Annex I A, point 2 concerns groundwater:

'whether groundwaters contain more than 50 mg/l nitrates or could contain more than 50 mg/l nitrates if action pursuant to Article 5 is not taken.'

17. Under Annex V, point 4(e) of the Nitrates Directive, Member States must notify the Commission of assumptions made regarding the effectiveness of their action programmes:

'the assumptions made by the Member States about the likely timescale within which the waters identified in accordance with Article 3(1) are expected to respond to the measure[s] in the action programme, along with an indication of the level of uncertainty incorporated in these assumptions.'

2. Drinking Water Directive

18. Article 5(1) and (2) of the Drinking Water Directive lays down minimum standards for drinking water:

'1. Member States shall set values applicable to water intended for human consumption for the parameters set out in Annex I.

2. The values set in accordance with paragraph 1 shall not be less stringent than those set out in Annex I. ...'

19. Under Annex I, Part B to the Drinking Water Directive, the limit value for nitrates is 50 mg/l.

3. *Water Framework Directive*

20. Article 4(1)(b)(ii) of the Water Framework Directive⁷ specifies the environmental objectives with regard to groundwater:

‘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).’

21. Article 4(1)(c) of the Water Framework Directive contains a specific provision for protected areas:

‘Member States shall achieve compliance with any standards and objectives at the latest 15 years after the date of entry into force of this Directive, unless otherwise specified in the Community legislation under which the individual protected areas have been established.’

22. Article 4(4) of the Water Framework Directive permits the time limits laid down in Article 4(1) to be extended by up to 12 years.

4. *Groundwater Directive*

23. Article 4(2) of the Groundwater Directive⁸ specifies when a body of groundwater is of good status.

‘A body or a group of bodies of groundwater shall be considered to be of good chemical status when

- (a) ...
- (b) the values for the groundwater quality standards listed in Annex I ... are not exceeded at any monitoring point in that body or group of bodies of groundwater; or
- (c) ...’

24. Point 1 of Annex I to the Groundwater Directive lays down a groundwater quality standard of 50 mg/l for nitrates.

C. *Austrian law*

25. The use of groundwater is governed by Paragraph 10(1) of the Wasserrechtsgesetz (Law on water rights) such that landowners do not require authorisation from the water rights authority to use groundwater for domestic or commercial needs provided that it is extracted only by hand-operated pumps or the intake is proportionate to the size of the individual’s land.

⁷ 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 (OJ 2000 L 327, p. 1), as amended by Commission Directive 2014/101/EU of 30 October 2014 (OJ 2014 L 311, p. 32).

⁸ 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 (OJ 2006 L 372, p. 19), as amended by Commission Directive 2014/80/EU of 20 June 2014 (OJ 2014 L 182, p. 52).

III. Facts and request for a preliminary ruling

26. The Wasserleitungsverband Nördliches Burgenland, Mr Robert Prandl and the Gemeinde Zillingdorf (Municipality of Zillingdorf, Austria) lodged an application with the then Bundesministerium für Land und Forstwirtschaft, Umwelt und Wasserwirtschaft (Federal Ministry of Agriculture, Forestry, Environment and Water Management, Austria) for amendment of the action programme adopted to implement Article 5(4) of the Nitrates Directive in the form of a national regulation in order to render it compliant with the Nitrates Directive and to safeguard the protection enshrined in that directive, in particular the protection of human health, in connection with the use of groundwater from bodies of groundwater in which the wells of the three parties are located.

27. The Wasserleitungsverband Nördliches Burgenland is Austria's fourth largest water supplier. It provides corresponding water services, as it has more than 45 active water dispensers, namely wells and sources, and supplies on average around 160 000 people every year. It is a public body, namely an association of several municipalities. Under a national regulation it is required to perform the task of supplying public water, including levying water charges in a specific area. Property owners with buildings in its supply area are in principle under an obligation to connect the buildings to the water supply network. The Wasserleitungsverband also has the power, by adopting a regulation, to levy charges for providing water (of drinking water quality). It takes measures to reduce the nitrate value of the groundwater abstracted for drinking water purposes to below 50 mg/l before supplying it to consumers.

28. Mr Prandl, an individual in the Land of Lower Austria, currently meets his non-drinking water needs from a domestic well on his plot of land. He does not use it for drinking water on account of the high nitrate values. He therefore receives all his drinking water from a public water supplier.

29. The Gemeinde Zillingdorf is a municipality in Lower Austria and operates a non-drinking water well for municipal purposes. The well was originally a drinking-water well but was downgraded to a non-drinking water intake on account of the high nitrate level.

30. The nitrate value of 50 mg/l in groundwater was being exceeded by more than 100% at the time when the application was made, and that is the case at present at some of the Wasserleitungsverband's sample stations. At the time when the application was made, Mr Prandl's domestic well had a nitrate value of 59 mg/l, but in December 2017 it was below 50 mg/l. It is common ground that the values vary and it cannot therefore be concluded that values are at all times below 50 mg/l. At the time when the application was made, the municipality's well had a nitrate level of 71 mg/l, which also continued to remain high in December 2017.

31. It is common ground that no water with a nitrate value greater than 50 mg/l is used directly as drinking water. There are no other known health risks arising directly from the high nitrate values of the water sources at issue in this case.

32. It is also common ground that through the action programme under Article 5(4) of the Nitrates Directive measures were and are laid down to achieve the objectives of the directive. It is likewise clear that the groundwater nitrate values in the areas demarcated by the three applicants were constantly high over a certain period and that they remain high.

33. In Lower Austria there is a requirement to be connected to the public water supply network. Nevertheless, under national law Mr Prandl would be permitted to operate a domestic well without a permit, subject to certain legal restrictions. Water is not supplied to Mr Prandl and the Gemeinde Zillingdorf by the Wasserleitungsverband, but by other public water suppliers. There is no direct risk to health from high nitrate values.

34. The application lodged by the three applicants was dismissed by the decision now being contested before the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria) on the ground that the application was inadmissible by reason of the lack of subjective public-law rights or the lack of direct concern. The Verwaltungsgericht (Administrative Court) has therefore referred the following question to the Court:

‘Is Article 288 TFEU, in conjunction with Article 5(4) or with Article 5(5) of, in conjunction with paragraph 2 of Annex I to the Nitrates Directive, to be interpreted as meaning that:

- (a) a public water supplier, which provides water services and which in that regard, prior to delivering the drinking water to consumers (with compulsory connection), treats this water with high nitrate values taken from the wells available to it for that purpose in such a way as to attain a value of less than 50 mg/l nitrate concentration prior to delivery to consumers, and which is also required by law to supply water within a specified geographical area, is directly concerned within the meaning of the case-law of the Court of Justice of the European Union (in this case possibly by failure to implement the Nitrates Directive), in so far as it is concerned by what are claimed to be inadequate action plans (as the value of 50 mg/l nitrate concentration in the water in this water supplier’s area is exceeded) and must for that reason take measures to treat the water and is therefore granted subjective rights under the Nitrates Directive
 - (a.1) to amendment of an action programme already adopted nationally to implement the Nitrates Directive (pursuant to Article 5(4) of the Nitrates Directive) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
 - (a.2) to the adoption of additional measures or reinforced actions (pursuant to Article 5(5) of the Nitrates Directive) with the aim of achieving the objectives laid down in Article 1(1) of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?
- (b) a consumer, who would be authorised by law to use the water from his own domestic well for his personal consumption and who does not use this water on account of high nitrate values (and who was unable to use it at the time of the application underlying the proceedings and who could, admittedly, use it at the time of the present application to the Court of Justice of the European Union, even though it is common ground that a further increase of the nitrate value to above 50 mg/l nitrate concentration in the water is to be expected), but who rather receives the water from a public water supplier, is to that extent directly concerned within the meaning of the case-law of the European Union (in this case possibly by failure to implement the Nitrates Directive), in so far as he is concerned by what are claimed to be inadequate action plans and the value of 50 mg/l nitrate concentration in the water of his water intake (domestic well) is exceeded, with the result that he is unable to exercise his legal right to make limited use of the groundwaters on his property and is therefore granted subjective rights under the Nitrates Directive
 - (b.1) to amendment of an action programme already adopted nationally to implement the Nitrates Directive (pursuant to Article 5(4) of the Nitrates Directive) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
 - (b.2) to the adoption of addition measures or reinforced actions (pursuant to Article 5(5) of the Nitrates Directive) with the aim of achieving the objectives laid down in Article 1(1) of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?

- (c) a municipality, which, as a public body, uses or makes available a communal well, which it operates, only for non-drinking water on account of nitrate values of over 50 mg/l nitrate concentration — without this affecting the drinking water supply — is directly concerned within the meaning of the case-law of the Court of Justice of the European Union (in this case possibly by failure to implement the Nitrates Directive as a result of inadequate action plans in this regard) in so far as the value of 50 mg/l nitrate concentration in the water at the source is exceeded and therefore a use as drinking water is not available, and is therefore granted subjective rights under the Nitrates Directive
- (c.1) to amendment of an action programme already adopted nationally to implement the Nitrates Directive (pursuant to Article 5(4) of the Nitrates Directive) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
- (c.2) to the adoption of additional measures or reinforced actions (pursuant to Article 5(5) of the Nitrates Directive) with the aim of achieving the objectives laid down in Article 1(1) of the Nitrates Directive and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?

In all three cases the protection of consumer health is safeguarded in any event either — in cases (b) and (c) — by taking the water from water suppliers providing it (with compulsory connection and a right to connection) or — in case (a) — by the corresponding treatment measures.'

35. Written observations were submitted by the Wasserleitungsverband Nördliches Burgenland, Mr Prandl and the Gemeinde Zillingdorf, jointly as applicants in the main proceedings, as well as the Republic of Austria, the Kingdom of the Netherlands and the European Commission. Those interested parties and the Republic of Poland took part in the hearing on 6 February 2019.

IV. Legal assessment

36. The request for a preliminary ruling is intended to clarify whether on the basis of the Nitrates Directive the three applicants in the main proceedings, a public drinking water supply undertaking, a municipality which operates a well and an individual owner of a well, may request that the competent authorities take measures going beyond the existing national action programme to implement the Nitrates Directive in order to attain a nitrate concentration of less than 50 mg/l in groundwater.

37. With this in mind, I will first discuss to what extent the applicants are able, in principle, to rely on the provisions of the Nitrates Directive and then examine under what conditions there could be a right to further measures to ensure a corresponding reduction in the nitrate concentration.

A. Reliance on the Nitrates Directive

38. As regards the right of the three applicants in the main proceedings to rely on the Nitrates Directive, Austria and the Netherlands object that the nitrate level in the wells does not cause a specific health risk because the public water supply provides sufficient drinking water that does not have excessive nitrate values. Like Poland, they caution against permitting an *actio popularis*.

39. This argument is not convincing.

40. In the absence of EU rules concerning the requirements for judicial review, it is for the domestic legal system of each Member State to determine those requirements in accordance with the principle of procedural autonomy provided, however, that those requirements are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).⁹

41. The principle of effectiveness in particular is significant in this case. It would be incompatible with the binding effect attributed to a directive by Article 288 TFEU to exclude, in principle, the possibility that the obligations which it imposes may be relied on by those concerned.¹⁰ At least the natural or legal persons directly concerned by an infringement of provisions of a directive must therefore be in a position to require the competent authorities to observe such obligations, if necessary by bringing an action before the competent courts.¹¹

42. The condition of being concerned ensures that the possibility of reliance on directly applicable provisions of a directive does not lead to an *actio popularis*.

43. In the main proceedings the direct concern of the applicants stems from the fact that the nitrate level in the groundwater interferes with legitimate uses of their wells. Furthermore, the health risk from the nitrate level gives grounds for direct concern at least in respect of Mr Prandl.

(a) Interference the use of the wells

44. The Court has previously held in relation to natural persons that the considerations regarding direct concern apply particularly in respect of a directive which is intended to protect public health.¹² The Nitrates Directive shares this objective, according to the sixth recital and Article 2(j) thereof.¹³ However, the overriding concern of the applicants in this case is based only indirectly on health protection.

45. This is possible as the Court has merely found that the considerations regarding reliance on EU environmental legislation would apply *particularly* in respect of provisions to protect health. The judgment in *Folk*, in which an impairment of fishing rights was sufficient to justify reliance on the Environmental Liability Directive¹⁴ in conjunction with the Water Framework Directive,¹⁵ shows that other forms of concern are also possible.

⁹ See, to that effect, judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); of 27 June 2013, *Agrokonsulting* (C-93/12, EU:C:2013:432, paragraphs 35 and 36); and of 22 February 2018, *INEOS Köln* (C-572/16, EU:C:2018:100, paragraph 42).

¹⁰ Judgments of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 66); of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 37); of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 44); and of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 34).

¹¹ See, to that effect, judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 39), and of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraph 100).

¹² 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).

¹³ See also judgment of 29 April 1999, *Standley and Others* (C-293/97, EU:C:1999:215, paragraph 34).

¹⁴ Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage (OJ 2004 L 143, p. 56), as amended by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 114).

¹⁵ Judgment of 1 June 2017 (C-529/15, EU:C:2017:419, paragraphs 47 to 49).

46. In the main action all three applicants are directly concerned as, according to the request for a preliminary ruling, they have the right to use their wells for producing drinking water but cannot exercise that right without further treatment of the water because the water, which contains more than 50 mg/l of nitrates, cannot be used as drinking water on the basis of the limit value fixed under Article 5 and Annex I, Part B to the Drinking Water Directive on grounds of health protection.

47. It is clear from Article 2(j) in particular that such concern is covered by the protective purpose of the Nitrates Directive, and must therefore be legally significant. Under that provision, the directive is intended to prevent interference with legitimate uses of water.

48. According to the request for a preliminary ruling, the use of the wells for producing drinking water is legitimate. Contrary to the view taken by Austria, no right is required to be able to abstract groundwater in drinking water quality anywhere. The term '*rechtmäßig*' used in the German and Dutch versions of the directive shows that interference with permitted uses of water is to be prevented and no absolutely enforceable right is required. The French and English versions are even clearer in this regard, as they use the terms '*légitime*' and '*legitimate*'. I would understand these language versions as referring to justifiable uses of water.

49. Furthermore, Annex I A, point 1 to the Nitrates Directive, where the nitrate limit value for identifying vulnerable surface freshwaters is defined by reference to the now repealed Directive concerning the quality required of surface water intended for the abstraction of drinking water in the Member States,¹⁶ shows that the use of water as drinking water is covered by the protective purpose of the Nitrates Directive.¹⁷

50. It is therefore sufficient that use as drinking water is allowed in order to be concerned by a possible infringement of the Nitrates Directive which interferes with the use of groundwater as drinking water. In the case of such concern, the person concerned must have a right, in principle, to require compliance with the Nitrates Directive.

51. It is immaterial in this regard whether it is possible, as in the case of the Wasserleitungsverband, to pass on any additional costs to third parties, as this necessity also constitutes interference with permitted uses of groundwater.

52. Furthermore, a consequence of the need to demonstrate concern is that the applicants in the main proceedings cannot require compliance with the Nitrates Directive in Austria in general but only in so far as the groundwater used by them is affected. It thus seems doubtful that Mr Prandl or the Gemeinde Zillingdorf are concerned by the quality of the Parndorfer Platte body of groundwater, which is described in their observations submitted jointly with the Wasserleitungsverband as being particularly polluted.

(b) Health protection

53. Furthermore, the health risk from the nitrate level gives grounds for direct concern at least in respect of Mr Prandl.

¹⁶ Council Directive 75/440/EEC of 16 June 1975 (OJ 1975 L 194, p. 26).

¹⁷ See judgment of 29 April 1999, *Standley and Others* (C-293/97, EU:C:1999:215, paragraph 34).

54. The Court has not made a specific, irrefutable risk to health a condition, however. This is illustrated very clearly by the judgment in *Stichting Natuur en Milieu and Others*, which concerned national emission ceilings for certain pollutants. The question whether an infringement of those ceilings poses a risk to health depends on the distribution of the pollutants.¹⁸ The Court nevertheless held that there are individuals directly concerned who are able to enforce compliance with such ceilings.¹⁹

55. I cannot see any reason to adopt a stricter approach than set out in this case-law with regard to recognition of direct concern. Under Article 3(3) TEU, Article 37 of the Charter of Fundamental Rights of the European Union and Article 191(2) TFEU, Union policy on the environment aims at a high level of protection. According to the latter provision, it is based on the precautionary principle and on the principle that preventive action should be taken. It would be incompatible with this to make the legal enforcement of EU environmental law dependent on a specific, irrefutable risk to health as in that case there would be reason to fear that damage to health would occur before any actual enforcement.

56. Consequently, natural persons at least, that is to say, Mr Prandl in the main proceedings, have the right to rely on the Nitrates Directive in respect of interferences with groundwater quality concerning them.

57. The Wasserleitungsverband and the Gemeinde, on the other hand, are legal persons and not therefore directly concerned by possible health risks. It must be presumed with regard to the Gemeinde in particular that it has a duty under national law to protect the health of its residents. The Wasserleitungsverband could have similar duties in respect of its customers. However, the request for a preliminary ruling does not contain any information in this regard and it does not therefore make any sense to examine these ideas in greater detail.

(c) Aarhus Convention

58. This interpretation of the concept of concern follows directly from the fundamental principles of EU law. However, it also constitutes a correct implementation of the obligations stemming from Article 9(3) of the Aarhus Convention in conjunction with Article 47(1) of the Charter of Fundamental Rights. Under Article 9(3), where they meet the criteria, if any, laid down in its national law, members of the public are to have access to administrative or judicial procedures to challenge acts and omissions by public authorities which contravene provisions of its national law relating to the environment. Article 47(1) provides that everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal.

59. That right would be deprived of all useful effect, and even of its very substance, if it had to be conceded that, by imposing conditions in domestic law, certain categories of ‘members of the public’, a fortiori ‘the public concerned’ that satisfy the requirements laid down in Article 2(5) of the Aarhus Convention, were to be denied of any right to bring proceedings.²⁰

60. Under Article 2(5) of the Aarhus Convention, the public concerned covers the public affected or likely to be affected by, or having an interest in, the environmental decision-making. Article 2(4) provides that the public consists of natural and/or legal persons.

¹⁸ See, by way of illustration, my Opinion in *Craeynest* (C-723/17, EU:C:2019:168, point 68 et seq., in particular point 85).

¹⁹ Judgment of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraphs 94 and 99 to 103).

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

61. For the reasons mentioned above, the applicants in the main proceedings are all concerned by the pollution of groundwater, because of their wells, and thus satisfy the conditions laid down in Article 2(5) of the Aarhus Convention.

62. It should be noted, for the sake of completeness, that under no circumstances can the existence of Article 9(3) of the Aarhus Convention be construed as restricting the possibility to rely on EU environmental legislation, as under Article 3(6) the Convention does not require any derogation from existing rights of access to justice in environmental matters. The reference in Article 9(3) to criteria laid down in national law does not therefore justify a restriction of reliance on EU law.

(d) Interim conclusion

63. It must therefore be concluded that a public water supplier, an individual and a municipality as a public body may, in principle, rely on the Nitrates Directive in so far as they are concerned by nitrate pollution of groundwater, for example because they are subject to interference with the use of their own wells for legitimate abstraction of drinking water.

B. The right to measures to comply with the value of 50 mg/l of nitrates in groundwater

64. However, thereby it has not yet been determined whether the applicants in the main proceedings may assert a right to measures to comply with the value of 50 mg/l of nitrates in groundwater.

65. Whenever the provisions of a directive appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly.²¹ Sufficient precision may be absent in particular if the provisions in question allow discretion. In such cases, however, there is at least an entitlement to a judicial review of whether the national legislation and its application have remained within the limits of the discretion set by the directive.²²

66. It makes no difference in this regard whether, as Austria asserts, the directive was correctly implemented. Those concerned must be able to rely on the implementing legislation in the case of correct implementation and in any case on the relevant provisions of the directive in the case of incorrect implementation. Moreover, the applicants at least take the view that the Nitrates Directive was not applied correctly.

67. Article 5(4), Article 4 and Annexes II and III to the Nitrates Directive contain mandatory requirements which, at least in some cases, do not allow any discretion. Mention should be made, for example, of the limitation of the amount of manure which may be applied per hectare under Annex III, point 1(2).²³ As those concerned by nitrate pollution may in principle rely on the directive, they should also be able to require enforcement of those specified amounts and similar requirements.

²¹ Judgments of 19 January 1982, *Becker* (8/81, EU:C:1982:7, paragraph 25); of 24 January 2012, *Dominguez* (C-282/10, EU:C:2012:33, paragraph 33); and of 6 November 2018, *Bauer and Willmeroth* (C-569/16 and C-570/16, EU:C:2018:871, paragraph 70).

²² Judgments of 24 October 1996, *Kraaijeveld and Others* (C-72/95, EU:C:1996:404, paragraph 56); of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging* (C-127/02, EU:C:2004:482, paragraph 66); of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447, paragraph 46); of 26 May 2011, *Stichting Natuur en Milieu and Others* (C-165/09 to C-167/09, EU:C:2011:348, paragraphs 100 to 103); of 5 September 2012, *Rahman and Others* (C-83/11, EU:C:2012:519, paragraph 25); and of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 44).

²³ Judgments of 2 October 2003, *Commission v Netherlands* (C-322/00, EU:C:2003:532, paragraph 113), and of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 129).

68. However, the request for a preliminary ruling concerns whether there is a right to measures to guarantee a nitrate concentration in groundwater below 50 mg/l, as claimed by the applicants in the main proceedings.

69. Such a right could stem from Article 5(4) and (5) of the Nitrates Directive. Article 5(4) provides that in the vulnerable zones, and throughout the national territory of Austria, action programmes are to be implemented, the content of which is set out in Annex III, Article 4 and Annex II. Under Article 5(5), Member States must moreover take, in the framework of the action programmes, such additional measures or reinforced actions as they consider necessary if, at the outset or in the light of experience gained in implementing the action programmes, it becomes apparent that the measures referred to in Article 5(4) will not be sufficient for achieving the objectives specified in Article 1.

70. The parties disagree in particular over whether levels must actually fall below the value of 50 mg/l of nitrates but also over the time frame and the discretion available to the Member States.

1. The value of 50 mg/l of nitrates

71. Austria and the Netherlands dispute that the Nitrates Directive imposes an obligation to prevent a level of more than 50 mg/l in groundwater or to reduce an existing higher level such that this value is not exceeded.

(a) The responsibility of agriculture

72. It is correct that measures under the Nitrates Directive do not relate to the nitrate level in waters in general. Under Article 1 water pollution caused or induced by nitrates from agricultural sources is to be reduced and further such pollution prevented.

73. If a nitrate level was not attributable to agriculture, no measures could then be taken under the Nitrates Directive. However, pollution does not have to be exclusively agricultural.²⁴ Rather, measures are necessary where the discharge of nitrogen compounds of agricultural origin makes a significant contribution to pollution.²⁵ In the past the Court has considered it significant that Walloon agriculture contributed 19% of the total nitrogen in the Meuse basin and 17% of the total nitrogen in the Escaut basin and that those two rivers drain into the eutrophic North Sea.²⁶ This shows that even relatively limited contributions made by agriculture to a nitrogen load are sufficient to trigger obligations under the Nitrates Directive.

74. It is clear that nitrogen discharges from Austrian agriculture make a significant contribution to the nitrate level in the groundwater in the area in which the applicants in the main proceedings operate their wells because Austria applies action programmes under Article 5(4) of the Nitrates Directive there. Without significant contributions made by agriculture, this would not be necessary.

²⁴ Judgments of 29 April 1999, *Standley and Others* (C-293/97, EU:C:1999:215, paragraph 30); of 8 September 2005, *Commission v Spain* (C-416/02, EU:C:2005:511, paragraph 69); and of 22 September 2005, *Commission v Belgium* (C-221/03, EU:C:2005:573, paragraph 84).

²⁵ Judgments of 29 April 1999, *Standley and Others* (C-293/97, EU:C:1999:215, paragraph 35), and of 22 September 2005, *Commission v Belgium* (C-221/03, EU:C:2005:573, paragraph 87).

²⁶ Judgment of 22 September 2005, *Commission v Belgium* (C-221/03, EU:C:2005:573, paragraph 86).

(b) The permitted nitrate level in groundwater

75. If agriculture makes a significant contribution to the nitrate level, both Article 3(1) and Annex I A, point 2 to the Nitrates Directive and the definition of ‘pollution’ under Article 2(j) in conjunction with the Drinking Water Directive suggest that a nitrate level of more than 50 mg/l in groundwater is to be regarded as pollution. In that case Member States must take action pursuant to Article 5 of the Nitrates Directive.

76. Under Article 3(1) of the Nitrates Directive, waters affected by pollution and waters which could be affected by pollution if action pursuant Article 5 is not taken are to be identified by the Member States in accordance with the criteria set out in Annex I. This applies, under Annex I A, point 2 to the Nitrates Directive, where groundwater contains or could contain more than 50 mg/l of nitrates and²⁷ action pursuant to Article 5 is not taken.

77. If, however, a zone with more than 50 mg/l nitrates in the groundwater is considered to be affected by pollution, that level is to be prevented or eliminated pursuant to Article 1 of the Nitrates Directive.

78. Furthermore, Article 2(j) of the Nitrates Directive defines pollution as the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.

79. A nitrate level of more than 50 mg/l in groundwater must therefore be regarded as pollution specifically because it interferes with legitimate uses of wells for the abstraction of drinking water. For a limit value of 50 mg/l of nitrates applies to drinking water under Article 5 and Annex I, Part B to the Drinking Water Directive.

80. The distinction between raw water and drinking water advanced by Austria does not call this conclusion into question.

81. It is true that the Nitrates Directive does not establish a right to be able to use groundwater as drinking water without restriction. After all, the Nitrates Directive does not contain rules on other pollutants or on nitrate levels not attributable to agriculture.

82. As has already been explained, however, the Nitrates Directive is intended to ensure that the abstraction of drinking water is not prevented because of the nitrate level in the water in question,²⁸ at least in so far as this is attributable to a significant degree to agriculture.

83. This interpretation of the Nitrates Directive is reinforced by the fact that Article 4(2) and point 1 of Annex I to the Groundwater Directive also set a limit value of 50 mg/l of nitrates for the good status of groundwater. It is true that Article 4(2) of the Groundwater Directive also mentions alternative benchmarks for good groundwater status. In addition, the time limits for achieving that status extended pursuant to Article 4(4) of the Water Framework Directive have not yet expired. Nevertheless, the criterion laid down in the Groundwater Directive also shows that the value contained in the Nitrates Directive for establishing pollution must be significant.

84. Consequently, the measures to implement the Nitrates Directive must seek to prevent or eliminate a nitrate level of more than 50 mg/l in groundwater if the discharge of nitrogen compounds from agricultural sources makes a significant contribution to the pollution.

²⁷ As is shown by the link with Article 3(1) and is confirmed in particular by the English and French versions of Annex I A, point 2, the ‘und’ [‘and’] in the German version is to be understood as meaning ‘falls’ [‘if’].

²⁸ See above, points 46 to 50.

2. The time frame

85. Austria also submits, however, that it is unclear by when the objectives in Article 1 of the Nitrates Directive are to be achieved.

86. The Nitrates Directive does not contain any time limit by when existing pollution must be reduced such that it falls below the value laid down therein and there is no further risk of it being exceeded. Such time limits are instead evident from Article 4(1) and (4) of the Water Framework Directive in conjunction with the Groundwater Directive and they have not yet expired on account of the permitted extensions.

87. It should also be noted that mandatory requirements relating to the timescale for groundwater status may also be associated with insurmountable difficulties in practice. The 13th recital of the Nitrates Directive states that on account of local geological conditions it may be many years before protection measures lead to improvements in water quality. Other factors such as precipitation levels or evaporation also play a role.²⁹

88. However, even though the Nitrates Directive does not specify by when the objectives in Article 1 are to be achieved, it does contain mandatory rules on when the necessary measures for achieving those objectives must be taken. That obligation exists at the outset of the first action programme or in the light of experience gained in implementing the action programmes and therefore when a need for them is first observed.³⁰ No discretion is available with regard to that point in time.

89. Furthermore, Article 5(7) of the Nitrates Directive makes clear the time frame within which Member States must assess the abovementioned experience. Under that provision, Member States are to review and if necessary revise their action programmes at least every four years. In this connection, they are to take additional measures or reinforced actions in respect of Article 5(4) of the Nitrates Directive pursuant to Article 5(5), if they are necessary.³¹

90. If no improvement of the situation is found in this regular review, it must be concluded, according to the Court, that the action programmes are not sufficient.³² The Member States cannot then wait until there is no reasonable doubt as to the need for additional measures or reinforced actions.³³ As the Commission states, this applies especially where pollution has already persisted for a long period.

91. There is discretion at most as regards the respective measures and — linked to this — the time when the objectives laid down in Article 1 of the Nitrates Directive are achieved.

92. However, Member States must exercise that discretion and indicate which additional measures they are taking and when the abovementioned objectives are supposed to be achieved. This is because under Article 10(1) and Annex V, point 4(e) to the Nitrates Directive, they must submit to the Commission every four years a report containing inter alia their assumptions about the likely timescale within which the vulnerable waters are expected to respond to the measures in the action programme.

29 According to a report by the Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft of the Republic of Austria, *Grundwasseralters in Österreich — mittlere Verweilzeiten in ausgewählten Grundwasserkörpern* (as at December 2015, <https://www.bmnt.gv.at/wasser/wasserqualitaet/grundwasseralters.html>), groundwater is retained in the affected areas in the main proceedings in some cases between 11 and 25 years on average, in others even between 25 and 50 years.

30 Judgments of 2 October 2003, *Commission v Netherlands* (C-322/00, EU:C:2003:532, paragraph 166), and of 21 June 2018, *Commission v Germany* (C-543/16, not published, EU:C:2018:481, paragraph 53).

31 The reference in the German version to Article 5 as a whole is manifestly incorrect.

32 Judgment of 21 June 2018, *Commission v Germany* (C-543/16, not published, EU:C:2018:481, paragraph 61).

33 Judgment of 21 June 2018, *Commission v Germany* (C-543/16, not published, EU:C:2018:481, paragraphs 63 and 64).

93. Member States must therefore effectively review every four years whether the existing action programmes to implement the Nitrates Directive are sufficient for preventing or eliminating a nitrate level of more than 50 mg/l in groundwater and take all necessary additional measures or reinforced actions if it is apparent that this is not the case.

3. *The assessment of the action programmes*

94. However, the assessment whether the existing action programme is sufficient requires a forecast of its impact on the groundwater nitrate level. It may also be necessary to estimate what additional measures are needed.

(a) *The standard of review*

95. It is clear from the 13th recital of the Nitrates Directive, which has already been mentioned, that it is not always easy to make such an assessment for groundwater because on account of local geological conditions it may be many years before protection measures lead to improvements in water quality. And, as already mentioned, other factors such as precipitation levels or evaporation may also play a role.³⁴

96. EU law permits the competent authorities of the Member States to be granted broad discretion in the assessment of such complex points, as I recently explained in my Opinion in *Craeynest*.³⁵ The Court has also already recognised discretion with regard to certain rules of the Nitrates Directive.³⁶

97. In contrast with the point at issue in *Craeynest*, which concerns ambient air quality,³⁷ it is not evident in this case that nitrate pollution of groundwater leads to serious risks to human health or to similar environmental protection objectives in the European Union. It is thus not necessary to restrict the latitude available to competent authorities.

98. In exercising that discretion, Member States are however obliged to respect the objectives of the Nitrates Directive, namely the reduction of water pollution caused by nitrates from agricultural sources.³⁸ They must also ensure that the objectives of European Union policy in the area of the environment are achieved in accordance with the requirements of Article 191(1) and (2) TFEU.³⁹

³⁴ See footnote 29.

³⁵ C-723/17, EU:C:2019:168, point 41 et seq. See, in particular, judgments of 21 January 1999, *Upjohn* (C-120/97, EU:C:1999:14, paragraph 35), and of 9 June 2005, *HLH Warenvertrieb and Orthica* (C-211/03, C-299/03 and C-316/03 to C-318/03, EU:C:2005:370, paragraph 76).

³⁶ Judgments of 29 April 1999, *Standley and Others* (C-293/97, EU:C:1999:215, paragraphs 37 and 39); of 2 October 2003, *Commission v Netherlands* (C-322/00, EU:C:2003:532, paragraph 46); of 27 June 2002, *Commission v France* (C-258/00, EU:C:2002:400, paragraph 53); and of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 30).

³⁷ See my Opinion in *Craeynest* (C-723/17, EU:C:2019:168, points 47, 48 and 53 et seq.).

³⁸ Judgments of 27 June 2002, *Commission v France* (C-258/00, EU:C:2002:400, paragraph 53); of 2 October 2003, *Commission v Netherlands* (C-322/00, EU:C:2003:532, paragraph 46); and of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 30).

³⁹ Judgments of 4 September 2014, *Commission v France* (C-237/12, EU:C:2014:2152, paragraph 30); see also judgment of 2 October 2003, *Commission v Netherlands* (C-322/00, EU:C:2003:532, paragraph 45).

99. Although the Member States' procedural autonomy allows national courts to make such discretionary decisions subject to a strict review,⁴⁰ EU law does not require them to do so. It is sufficient, in principle, for the judicial review to be confined to manifest errors of assessment and procedural errors.⁴¹ In addition, it must also be assessed whether the competent authorities examined carefully and impartially all the relevant aspects of the individual case.⁴²

(b) The examination of the relevant aspects

100. Investigation of all the relevant aspects is particularly important in the main proceedings. The first sentence of Article 5(6) of the Nitrates Directive makes provision to this effect, stating that Member States are to draw up and implement suitable monitoring programmes to assess the effectiveness of action programmes.

101. This means in particular that they may not confine themselves to groundwater measurements if, because of geological and climatic conditions, these are unsuitable for showing within the four-year review cycle whether the action programmes are effective.⁴³ While EU law does not ask the Member States to do the impossible, they must, where necessary, at least employ alternative measurement methods known to be effective and make due efforts to develop appropriate new methods where they still do not exist. Accordingly, the Austrian report on the application of the Nitrates Directive describes a pilot project for sampling drainage water.⁴⁴ Consideration could also be given to model calculations or measurements in the soil above the groundwater table.

102. It is true that discretion also exists in defining these methods and assessing their results, as this constitutes complex scientific issues. The national courts must, however, at least be able to examine whether the competent authorities actually apply such methods and whether these — and their results — are scientifically plausible.

(c) Reasons stated for the action programme

103. The national court will also have to examine whether the reasons stated for the action programme counter, by comprehensible and, in particular, consistent statements, all scientifically substantiated doubts whether the programme is sufficient.

104. As the Commission rightly noted, in the assessment of the action programme by the competent authorities any exceedances of the value of 50 mg/l of nitrates in groundwater and their duration and trend are particularly important. In this regard, it will be necessary to investigate the claim made by the applicants in the main proceedings that, despite the action programmes which have existed since 2003, the groundwater nitrate level has not improved and, in some cases, has even deteriorated.

⁴⁰ My Opinion in *Craeynest* (C-723/17, EU:C:2019:168, point 39).

⁴¹ Judgments of 21 January 1999, *Upjohn* (C-120/97, EU:C:1999:14, paragraph 35), and of 9 June 2005, *HLH Warenvertrieb and Orthica* (C-211/03, C-299/03 and C-316/03 to C-318/03, EU:C:2005:370, paragraph 76). See the detailed statements in my Opinion in *Craeynest* (C-723/17, EU:C:2019:168, points 38 to 51).

⁴² Judgments of 9 March 2010, *ERG and Others* (C-379/08 and C-380/08, EU:C:2010:127, paragraph 61); of 22 November 2012, *M.* (C-277/11, EU:C:2012:744, paragraph 88); of 18 July 2013, *FIFA v Commission* (C-204/11 P, EU:C:2013:477, paragraph 20, and C-205/11 P, EU:C:2013:478, paragraph 21); of 5 November 2014, *Mukarubega* (C-166/13, EU:C:2014:2336, paragraph 48); and of 11 December 2014, *Boudjlida* (C-249/13, EU:C:2014:2431, paragraph 38).

⁴³ See, to that effect, judgment of 21 June 2018, *Commission v Germany* (C-543/16, not published, EU:C:2018:481, paragraphs 67 and 68).

⁴⁴ Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft of the Republic of Austria, *EU Nitratrictlinie 91/676/EWG — Österreichischer Bericht 2016*, pp. 58 and 59.

105. A further aspect that merits attention is the nitrogen surplus which, according to the Austrian report on the application of the Nitrates Directive, has averaged 30 kg/ha per year since 2007.⁴⁵ Such a surplus is at least *prima facie* contrary to Article 5(4) and Annex III, point 1(3) to the Nitrates Directive. Under those provisions, the Member States are to limit the land application of fertilisers, to be based on a balance between the foreseeable nitrogen requirements of the crops and the nitrogen supply to the crops from the soil and from fertilisation. A nitrogen surplus can hardly be regarded as a balance.

106. The requirements relating to the reasons stated for the action programme must not, however, be confused with the question whether the assessment by the competent authorities is convincing. The requirements relating to the reasons stated are met, in principle, if the reasons make it possible to review whether the assessment is manifestly erroneous.

(d) Establishment of a manifest error of assessment

107. As regards the establishment of a manifest error of assessment, lastly, the Court has not yet developed a general definition. It is nevertheless apparent from case-law that a decision is not vitiated by such an error if it can ‘reasonably’ be taken.⁴⁶ On the other hand, obvious contradictions or a lack of evidence to substantiate conclusions in particular can form the basis for a manifest error.⁴⁷ It is also possible to refute such an assessment by demonstrating that it is not credible or implausible.⁴⁸

(e) Interim conclusion

108. In summary, it can be stated that the national courts must be able to review the assessment of the effectiveness of action programmes and the decision whether or not to take additional measures or reinforced actions at least in respect of manifest errors and whether the competent authorities have respected the limits of their discretion as well as procedural requirements, in particular the obligation to state reasons, and have examined all the relevant aspects.

V. Conclusion

109. I therefore propose that the Court answer the request for a preliminary ruling as follows:

- (1) A public water supplier, an individual and a municipality as a public body may, in principle, rely on Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources in so far as they are concerned by nitrate pollution of groundwater, for example because they are subject to interference with the use of their own wells for legitimate abstraction of drinking water.
- (2) The measures to implement Directive 91/676 must seek to prevent or eliminate a nitrate level of more than 50 mg/l in groundwater if the discharge of nitrogen compounds from agricultural sources makes a significant contribution to the pollution.
- (3) Member States must effectively review every four years whether the existing action programmes to implement Directive 91/676 are sufficient for preventing or eliminating a nitrate level of more than 50 mg/l in groundwater and take all necessary additional measures or reinforced actions if it is apparent that this is not the case.

⁴⁵ Cited in footnote 44, pp. 40 and 41.

⁴⁶ Judgment of 12 March 2002, *Omega Air and Others* (C-27/00 and C-122/00, EU:C:2002:161, paragraph 72).

⁴⁷ Judgment of 22 November 2007, *Spain v Lenzing* (C-525/04 P, EU:C:2007:698, paragraph 60).

⁴⁸ Judgment of 14 June 2018, *Lubrizol France v Council* (C-223/17 P, not published, EU:C:2018:442, paragraph 39).

- (4) The national courts must be able to review the assessment of the effectiveness of action programmes and the decision whether or not to take additional measures or reinforced actions at least in respect of manifest errors and whether the competent authorities have respected the limits of their discretion as well as procedural requirements, in particular the obligation to state reasons, and have examined all the relevant aspects.