Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

15 October 2015*

(Failure of a Member State to fulfil obligations — Directive 2011/92/EU — Assessment of the effects of certain public and private projects on the environment — Article 11 — Directive 2010/75/EU — Industrial emissions (integrated pollution prevention and control) — Article 25 — Access to justice — Non-compliant national procedural rules)

In Case C-137/14,

ACTION for failure to fulfil obligations under Article 258 TFEU, brought on 21 March 2014,

European Commission, represented by C. Hermes and G.Wilms, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Federal Republic of Germany, represented by T. Henze and J. Möller, acting as Agents,

defendant,

supported by

Republic of Austria, represented by C. Pesendorfer, acting as Agent,

intervener.

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta (Rapporteur), President of the First Chamber, acting as President of the Second Chamber, J.L. da Cruz Vilaça, A. Arabadjiev, C. Lycourgos and J.-C. Bonichot, Judges,

Advocate General: M. Wathelet,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 12 March 2015,

after hearing the Opinion of the Advocate General at the sitting on 21 May 2015,

gives the following

* Language of the case: German.

Judgment

1 By its application, the European Commission asks the Court to declare that, by restricting:

— annulment of administrative decisions covered 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) and by Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ 2010 L 334, p. 17) to only those cases where an infringement of an individual public-law right has been established (Paragraph 113(1) of the Administrative Court Rules (Verwaltungsgerichtsordnung; 'the VwGO');

— annulment of decisions on the basis of procedural errors in the absence of an environmental impact assessment or pre-assessment (Paragraph 4(1) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006 (BGBl. 2006 I, p. 2816), as amended by the Law of 21 January 2013 ('the UmwRG') and to cases in which the applicant proves that the procedural error was causative as regards the result of the decision and the applicant's legal position is affected (Paragraph 46 of the Law on Administrative Procedure (Verwaltungsverfahrensgesetz; 'the VwVfG'), read in conjunction with Paragraph 113(1) of the VwGO);

— the standing to bring proceedings and the scope of the courts' review to objections previously raised within the period allowed for raising objections in the administrative procedure that led to the adoption of the decision (Paragraph 2(3) of the UmwRG, as amended, and Paragraph 73(4) of the VwVfG);

— in procedures initiated after 25 June 2005 and concluded before 12 May 2011, the right of environmental organisations to bring proceedings to legal provisions that confer rights on individuals (Paragraph 2(1) of the UmwRG, as amended, read in conjunction with Paragraph 5(1) thereof);

— in procedures initiated after 25 June 2005 and concluded before 12 May 2011, the scope of the courts' review of appeals by environmental organisations to legal provisions that confer rights on individuals (Paragraph 2(1) of the UmwRG, as amended, read in conjunction with Paragraph 5(1) thereof), and

by excluding generally any administrative procedure initiated before 25 June 2005 from the scope of application of the UmwRG (Paragraph 5(1) of the UmwRG), the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75.

Legal context

EU law

2 Article 11 of Directive 2011/92 provides:

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

having a sufficient interest, or alternatively,

maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition,

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

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice.

…

4. The provisions of this Article shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. In order to further the effectiveness of the provisions of this article, Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.'

3 Article 25 of Directive 2010/75 provides:

'1. Member States shall ensure that, in accordance with the relevant national legal system, members of the public concerned have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to Article 24 when one of the following conditions is met:

(a) they have a sufficient interest;

(b) they maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition.

2. Member States shall determine at what stage the decisions, acts or omissions may be challenged.

3. What constitutes a sufficient interest and impairment of a right shall be determined by Member States, consistently with the objective of giving the public concerned wide access to justice.

…

4. Paragraphs 1, 2 and 3 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive.

5. Member States shall ensure that practical information is made available to the public on access to administrative and judicial review procedures.'

German law

The Verwaltungsgerichtsordnung

4 Under Paragraph 42 of the VwGO):

‘1. An action can seek to have an administrative measure set aside or to have the adoption of an administrative measure ordered in the event of a refusal or failure to act.

2. Except where otherwise provided by law, such an action is admissible only if the applicant asserts that his rights have been impaired by the administrative measure at issue or by the refusal or failure to act.’

5 Paragraph 113(1) of the VwGO reads as follows:

‘To the extent that an administrative measure is unlawful and as a consequence a claimant’s rights have been infringed, the court shall annul the administrative measure and any internal appeal decision thereon.’

The Verwaltungsverfahrensgesetz

6 Under Paragraph 24 of the VwVfG:

‘1. The authority shall inquire of its own motion into the facts. It shall determine the nature and scope of the investigations; it shall not be bound by the arguments and requests for evidence of the interested persons or parties.

2. The authority shall take account of all the facts relevant to the particular case, including those favourable to the interested persons or parties.

3. The authority shall not refuse to receive statements or requests falling within its competence on the ground that it considers the statement or request to be materially inadmissible or unfounded.’

7 Paragraph 44 of the VwVfG provides:

‘1. An administrative measure shall be void in so far as it is vitiated by a particularly serious defect which is manifest in the context of a reasonable assessment of all the relevant circumstances.

2. Regardless of whether the conditions set out in subparagraph 1 are fulfilled, an administrative measure shall be deemed to be void

— which was adopted in writing or electronically, where the authority which adopted it is not identified in a recognisable manner;

— which, pursuant to a statutory provision, may be adopted only through the delivery of a document, where that formal requirement has not been fulfilled;

— which an authority adopted ultra vires, as defined by Paragraph 3(1)(1), and without authority to do so;

— which, for practical reasons, cannot be enforced;

— which requires the commission of an unlawful act constituting an offence or subject to a penalty; or

— which is contrary to accepted principles of morality.

…’

8 Paragraph 46 of the VwVfG provides:

‘An application for the setting aside of an administrative measure which is not invalid under Paragraph 44 cannot be made solely on the ground that it was adopted in infringement of provisions governing procedure, form or [territorial] competence, where it is clear that that infringement has not affected the substance of the decision.’

9 Article 73 of the VwVfG reads as follows:

‘1. The project manager must submit the plan to the authority responsible for the investigation with a view to implementation of the investigative procedure. The plan shall comprise designs and explanations which show the project, the reasons for its conception and the land and installations affected by the project.

2. During the month following receipt of the comprehensive plan, the authority responsible for the investigation shall instruct the authority whose area of responsibilities is affected by the project to adopt a position and to ensure that the plan is submitted for consultation in the municipalities affected by the project.

3. The municipalities referred to in subparagraph 2 shall submit the plan for consultation in the course of the three weeks following receipt and for a period of one month. …

3a. The administrative authorities referred to in subparagraph 2 shall submit their observations within a period fixes by the authority responsible for the investigation, which shall not exceed three months. Observations submitted after expiry of the deadline referred to in the first sentence must be taken into account if the authority approving the plan is or should have been aware of the questions raised or if they are important to the legality of the decision. Otherwise, those observations may be taken into account.

4. Within two weeks of expiry of the deadline of the submission for consultation, any person whose interests are affected by the project may, in writing or by statement included in the record, raise objections to the plan before the municipality or authority responsible for the investigation. … Upon expiry of the deadline for raising objections, any objection not based on individual claims in private law shall be excluded. This shall be stated in the public notice of the submission for consultation or in the notification of the deadline for raising objections. Associations which, by virtue of recognition following from other legal provisions, are authorised to bring actions under the Verwaltungsgerichtsordnung (Rules of the Administrative Court) against the decision referred to in Paragraph 74 may submit observations within the deadline set out in the first sentence. …

5. The municipalities in which the plan must be submitted for consultation must give prior information concerning that submission in the manners customarily used locally. That public notice must state:

(1) where and for how long the plan is lodged so that it may be consulted;

(2) that any objections must be sent to the services designated in the public notice within the time-limit set for that purpose;

(3) that the debate may take place even in the absence of one of the parties on the date fixed for that purpose;

(4) that: …

(a) the persons who have raised objections or the associations who have submitted observations may be informed of the date of the debate by a public notice,

(b) service of the decision taken on the objections may be replaced by a public notice,

…

6. After expiry of the time-limit for submitting objections, the authority responsible for the investigation shall discuss with the project manager, the administrative authorities, the persons concerned and those who have objected the objections received within the time-limit and the observations submitted within the time-limit by the associations referred to in the fifth sentence of subparagraph 4 to the plan and the statements of the positions of the administrative authorities with regard to the plan. The date of the debate shall be published by notice in the manners customarily used locally at least one week in advance. The administrative authorities, the project manager and the persons who have objected or submitted observations shall be informed of the date of the debate. If more than 50 notices, apart from those addressed to the administrative authorities and the project manager, are sent, they may be replaced by a public notice. The public notice shall be made, by derogation from the second sentence, by publication of the date of the debate in the official bulletin of the authority responsible for the investigation and, in addition, in the local daily newspapers distributed in the sector which the project is intended to affect. The notice in the official bulletin shall be authoritative as regards the time-limit provided for in the second sentence. …

…

9. The authority responsible for the investigation shall define its position when the investigation procedure is completed and shall send it to the authority approving the plan, in so far as possible, within one month from the closure of the debate, together with the plan, the statements of position of the administrative authorities and the pending objections.'

The Gesetz über die Umweltverträglichkeitsprüfung

10 The first sentence of Paragraph 2(1) of the Law on Environmental Impact Assessments (Gesetz über die Umweltverträglichkeitsprüfung; 'the UVPG') provides:

'The environmental impact assessment shall be an integral part of the administrative procedures for making decisions on the lawfulness of projects.'

11 Under Paragraph 2(3) of the UVPG, '[f]or the purposes of the first sentence of subparagraph 1, "decisions" mean … planning approvals'.

The Umwelt-Rechtsbehelfsgesetz, as amended

12 Paragraph 1(1) of the UmwRG, as amended, provides that it is to apply to actions which challenge decisions for the purposes of Paragraph 2(3) of the UVPG, relating to the lawfulness of projects for which there may be an obligation, under the UVPG, to carry out an environmental assessment.

13 Paragraph 2 of the UmwRG, as amended, is worded as follows:

‘1. A domestic or foreign association … may bring an action in accordance with [the VwGO] to challenge a decision within the meaning of the first sentence of Paragraph 1(1) or a failure to adopt such a decision, without being required to maintain an impairment of its own rights, provided that the association

— asserts that a decision within the meaning of the first sentence of Paragraph 1(1) or a failure to adopt such a decision contravenes legislative provisions which seek to protect the environment and which may be relevant to the decision;

— asserts that it is affected by the decision within the meaning of the first sentence of Paragraph 1(1) or a failure to adopt such a decision, within the scope of its activity of promoting the objectives of environmental protection, as set out in its statutes; and

— was entitled to participate in a procedure referred to in the first sentence of Paragraph 1(1) and it made observations on the merits thereof in accordance with the provisions in force, or it was not given the opportunity to make observations thereon, contrary to the provisions in force.

2. An association that is not recognised ... may bring an action under subparagraph 1 only if

— it fulfils the conditions for recognition at the time of bringing the action,

— it has submitted a request for recognition,

— no decision has yet been taken concerning its recognition, for reasons beyond its control.

...

3. If the association has had the opportunity to make observations during the procedure referred to in the first sentence of Paragraph 1(1), it is prohibited from raising, during the appeal procedure, any objection which it did not raise, or did not raise in good time according to the provisions in force, but which it could have raised during the procedure referred to in the first sentence of Paragraph(1).

4. If a decision referred to in the first sentence of Paragraph 1(1) has not been made public or has not been notified to the association, in accordance with the provisions in force, the opposition or appeal shall be brought within one year from the time the association became or should have become aware of the decision. ...

5. Actions brought in accordance with subparagraph 1 shall be deemed well founded,

— in so far as the decision within the meaning of the first sentence of Paragraph 1(1) or the failure to adopt such a decision infringes provisions which seek to protect the environment and are relevant to the decision;

— in the case of actions relating to construction plans, in so far as the findings contained in the construction plan and forming the basis for the lawfulness of a project subject to the obligation [of an environmental impact assessment] infringe environmental protection provisions; and

where the infringement affects interests of environmental protection which are included in the objectives promoted by the association under its statutes. In relation to the decisions referred to in the first sentence of Paragraph 1(1), there must also exist a requirement to carry out an environmental impact assessment.’

14 Paragraph 4 of the UmwRG, as amended, provides:

‘1. An application for the annulment of a decision on the lawfulness of a project within the meaning of point 1 of the first sentence of paragraph 1(1) may be made if:

— an environmental impact assessment or

— a preliminary assessment of the requirement in the individual case for an environmental impact assessment,

as required in accordance with the provisions of [the UVPG], … has not been carried out and that omission has not been made good.

…

3. Subparagraphs 1 and 2 shall apply mutatis mutandis to actions by the parties provided for in points 1 and 2 of paragraph 61 of [the VwGO].’

15 Under Paragraph 5 of the UmwRG, as amended:

‘1. This Law shall apply to procedures as provided for in the first sentence of Paragraph 1(1) which were or should have been initiated after 25 June 2005; the first part of the sentence shall not apply to the decisions referred to in the first sentence of Paragraph 1(1) which became enforceable before 15 December 2006.

...

3. Recognition procedures already initiated under this Law shall be completed by the Federal Environment Agency under the provisions in force until 28 February 2010.

4. The decision-making procedures referred to in point 1 of the first sentence of Paragraph 1(1), the approval procedures referred to in point 2 of the first sentence of Paragraph 1(1) and the appeal procedures referred to Paragraph 2 which were in progress on 12 May 2011 or which were initiated after that date and have not been closed and resulted in an enforceable decision by 29 January 2013 shall be completed in accordance with the provisions of this Law in the version in force as from 29 January 2013. By derogation from the first sentence, Paragraph 4a(1) shall apply only to judicial review procedures which were initiated after 29 January 2013.’

The pre-litigation procedure and the proceedings before the Court

16 On 18 December 2006, the Commission received a complaint alleging the incorrect transposition, by Paragraph 2 of the UmwRG, of Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) and of Article 15a of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26). Following that complaint, on 1 October 2012 the Commission sent a letter of formal notice to the Federal Republic of Germany relating to a failure to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, those two directives having in the meantime replaced Directives 85/337 and 96/61 respectively.

17 The Federal Republic of Germany responded to the letter of formal notice on 30 November 2012. On 6 February 2013, it requested the Commission to close the procedure on the ground that since the adoption of the UmwRG, as amended, the German legislation complied with the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289).

18 On 26 April 2013, the Commission sent a reasoned opinion to the Federal Republic of Germany, to which the latter responded on 10 July 2013. Being dissatisfied with that reply, the Commission decided to bring the present action.

19 By application lodged at the Registry of the Court on 9 July 2014, the Republic of Austria sought leave to intervene in the present case in support of the Federal Republic of Germany. By decision of 11 August 2014, the President of the Court granted that request.

The request to reopen the oral procedure

20 Following the delivery of the Opinion of the Advocate General, the Federal Republic of Germany, by document dated 30 June 2015, requested the Court to reopen the oral part of the procedure in accordance with Article 83 of its Rules of Procedure, on the ground that the Advocate General's Opinion 'proposed to insert a fresh plea in law into the subject-matter of the proceedings on which the Federal Republic of Germany has not had an opportunity to comment either in writing or orally'.

21 It should be borne in mind that, according to Article 83 of the Rules of Procedure, the Court may, at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union.

22 That is not the situation here. Since the Federal Republic of Germany refers to the last of the situations set out in that article of the Rules of Procedure, it is necessary to note that the Advocate General's reasoning, called into question by that Member State, does not in any way constitute an argument on the basis of which the present case must be decided.

23 In the light of the foregoing, the Court considers that there is no need to reopen the oral part of the procedure.

The action

The first complaint, concerning the restriction of the review of the legality of administrative decisions under Directives 2011/92 and 2010/75 to consideration only of the provisions of national law which confer rights on individuals

Arguments of the parties

24 The Commission is of the opinion that Paragraph 113(1) of the VwGO unlawfully restricts the review of the legality of administrative decisions to consideration only of the provisions of national law which confer rights on individuals. Thus, legal protection, in the event of a procedural defect, is ensured in Germany only if the procedural rule at issue gives rise to an individual public-law right in favour of an

individual. In accordance with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, the review of decisions under those directives ought to be capable of review of both the substance and of compliance with the procedural rules.

25 The Federal Republic of Germany submits that the Member States have discretion in their organisation of the judicial sphere. The extent of the review to be carried out by the national courts is not governed by those provisions of EU law, since they do not prescribe the criteria for examination which are to be applied by those courts. In fact, Article 11 of Directive 2011/92, like Article 25 of Directive 2010/75, does not contain any requirements concerning the scope of the review by the courts, but merely places the obligation on the Member States to provide a review mechanism enabling challenges to the substantive or procedural legality of any administrative decision or omission.

26 The Federal Republic of Germany states that, in accordance with Paragraph 42(2) of the VwGO, the admissibility of an action seeking to have an administrative measure set aside or to have the adoption of an administrative measure ordered presupposes that the applicant asserts that his rights have been impaired by that act or by the refusal or failure to adopt it. Under Paragraph 113(1) of that law, the merits of the action and possible annulment of an administrative decision depend on an individual public-law right of the applicant. Thus, contradictions in the assessment of the admissibility and merits of a single action are avoided, only actions admissible under Paragraph 42(2) of the VwGO being likely to lead to an annulment under Paragraph 113(1) of that law.

27 The Republic of Austria argues that application of the criteria both of the necessary interest for a review procedure before a court of law and of the 'impairment of a right' falls within the scope of the States' domestic law. Member States have a broad discretion, which in any event permits the right of action of individuals to be limited to individual public-law rights.

Findings of the Court

28 In order to assess the merits of the first complaint raised by the Commission, it must be noted that that does not refer to the conditions for admissibility of actions provided for under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, since those actions are governed by Paragraph 42(2) of the VwGO, but the scope of the judicial review concerning those actions, in so far as, in accordance with those provisions, the 'members of the public concerned' must be able to bring court proceedings 'to challenge the substantive or procedural legality of decisions, acts or omissions' under those directives.

29 The first sentence of Paragraph 113(1) of the VwGO provides, in essence, that the court having jurisdiction annuls an unlawful administrative act only in so far as, 'as a consequence' a claimant's 'rights have been infringed'. The annulment of an administrative act therefore also means that the unlawfulness found by the court must involve an infringement of an individual public-law right of the applicant.

30 In that regard, it must be borne in mind that, in accordance with Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75, the Member States are to ensure that the members of the public concerned maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition, have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of decisions, acts or omissions subject to the provisions of those directives.

31 In addition, paragraph 3 of those articles provides that the Member States are to determine, inter alia, what constitutes impairment of a right.

32 In those circumstances and with regard to the present complaint, it must be pointed out that, if the Member State in question can, pursuant to the abovementioned provisions of Directives 2011/92 and 2010/75, make the admissibility of actions brought by individuals against the decisions, acts or omissions which fall within the scope thereof subject to conditions such as the requirement of impairment of an individual public-law right, that Member State is also authorised to provide that the annulment of an administrative decision by the court having jurisdiction requires the infringement of an individual public-law right of the applicant.

33 The Court has previously held, in paragraph 45 of its judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), that the national legislature is entitled to confine to individual public-law rights the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 10a of Directive 85/337, now Article 11 of Directive 2011/92, but that such a limitation cannot be applied as such to environmental protection organisations without disregarding the objectives of the last sentence of the third paragraph of Article 10a of Directive 85/337.

34 It follows therefrom that the first sentence of Paragraph 113(1) of the VwGO cannot be regarded as being incompatible with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

35 Consequently, the first complaint raised by the Commission in support of its action must be rejected.

The second complaint, concerning the restriction of the situations in which annulment of an administrative decision falling within the scope of Directives 2011/92 and 2010/75 may be sought on the ground of procedural defect

Arguments of the parties

36 In the first part of that complaint, the Commission submits that, in accordance with Paragraph 4(1) of the UmwRG, an administrative authorisation can be annulled only if it was not granted on the basis of a procedurally correct environmental impact assessment or pre-assessment. However, if such an assessment or pre-assessment was carried out, but following a procedure which did not satisfy the requirements of Article 11 of Directive 2011/92, it is not possible to challenge it before a German court or tribunal.

37 Such a restriction on the review by the courts of the administrative decisions in question is, therefore, incompatible with that provision of EU law.

38 The Federal Republic of Germany accepts that Paragraph 4(1) of the UmwRG covers only those cases where an environmental impact assessment has not been carried out. Where such an assessment has been carried out but is affected by a procedural defect, it is, however, possible to seek review by the courts, on the conditions laid down in the first sentence of Paragraph 113(1) of the VwGO and Paragraph 46 of the VwVfG.

39 That Member State points out that, in accordance with the latter provision of national law, the defective nature of an assessment can always be alleged by the applicant, in so far as the procedural defect alleged is not manifestly irrelevant to the outcome of the decision on the merits.

40 By the second part of its complaint, the Commission submits that, in accordance with Paragraph 46 of the VwVfG, a challenge by an individual to the legality, on the ground of a procedural defect, of an administrative decision concerning an environmental impact assessment cannot lead to the annulment of that decision unless it is possible that the decision would have been different without the procedural

defect alleged and unless, at the same time, a substantive legal position to which the applicant was entitled has been affected. Accordingly, it is for the applicant to establish, firstly, that causal link and, secondly, the effect of that defect on his rights.

41 The Commission argues that Article 11 of Directive 2011/92 does not allow the burden of proving such a causal link to be placed on the applicant.

42 That institution comments that the second condition laid down in Paragraph 46 of the VwVfG, that such a defect must affect 'a substantive legal position' to which the applicant is entitled, is also incompatible with Article 11 of Directive 2011/92. When an action is admissible, the Member States cannot place restrictions on the pleas in law which may be raised in support of that action. Consequently, if an administrative decision affects the public-law right of an individual and if that person has an interest in bringing proceedings, the national court having jurisdiction must carry out a full review of the legality of that decision. In so doing, it cannot ignore procedural defects, even if they do not infringe the applicant's rights of the defence.

43 The Federal Republic of Germany points out that the requirement for a causal link laid down in Paragraph 46 of the VwVfG does not, in principle, affect the achievement of the objectives of Article 11 of Directive 2011/92.

44 That Member State also submits that it is not correct, in the light of German law, to assert that it is for the applicant to prove impairment of a public-law right.

45 It argues that Paragraph 46 of the VwVfG is a specific provision which enables the public authority to defend itself against an application for annulment of an administrative decision. The administrative authority is entitled to rely, in its defence, on the fact that its decision cannot be annulled despite the fact that it is indeed vitiated by the procedural defect alleged by the applicant if that authority can show that that defect manifestly did not have any effect on the substance of the decision, which it is for the court to ascertain in accordance with Paragraph 46 of that law. However, that court can annul the decision in question only if it has no doubt in that regard. Where there is doubt, it is to be interpreted to the detriment of the administrative authority and, therefore, in favour of the applicant.

46 However, the Federal Republic of Germany states that, as part of the revision of the UmwRG, it is proposed to adopt a clarifying provision as regards the transposition of Article 11 of Directive 2011/92.

Findings of the Court

– The first part of the second complaint

47 As regards the first part of the second complaint concerning the restriction of the review by the courts of administrative decisions to those situations alone where there is a total absence of the mandatory environmental impact assessment or pre-assessment, it must be noted that the Court recalled, in paragraph 36 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), that it had already ruled, in paragraph 37 of its judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), that Article 11 of Directive 2011/92 has in no way restricted the pleas that may be put forward in support of the actions covered by that provision.

48 Furthermore, in paragraph 37 of that judgment, the Court held that the provisions of national law transposing Article 11 of Directive 2011/92 may not limit their applicability solely to cases in which the legality of a decision is challenged on the ground that no environmental impact assessment has been carried out. Excluding that applicability in cases in which, having been carried out, an

environmental impact assessment is found to be vitiated by defects — even serious defects — would render largely nugatory the provisions of Directive 2011/92 relating to public participation. Such exclusion would therefore run counter to the objective of ensuring wide access to courts of law as mentioned in Article 11 of that directive.

49 It is apparent from paragraph 38 of that judgment that Article 11 of Directive 2011/92 precludes the Member States from limiting the applicability of the provisions transposing that article to cases in which the legality of a decision is challenged on the ground that no environmental impact assessment was carried out, while not extending that applicability to cases in which such an assessment was carried out but was irregular.

50 Consequently, Paragraph 4(1) of the UmwRG must be regarded as incompatible with Article 11 of Directive 2011/92.

51 With regard to the argument put forward by the Federal Republic of Germany concerning Paragraph 46 of the VwVfG that, where an environmental impact assessment or pre-assessment has been carried out but is vitiated by a procedural defect, it is possible to bring legal proceedings on the conditions laid down in that paragraph, it should be recalled, on the one hand, that provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity necessary to satisfy the requirements of legal certainty (judgments in *Dillenkofer and Others*, C-178/94, C-179/94 and C-188/94 to C-190/94, EU:C:1996:375, paragraph 48, and *Commission* v *Portugal*, C-277/13, EU:C:2014:2208, paragraph 43), which is not the situation in the present case.

52 On the other hand, it is not in dispute that that provision of national law itself lays down restrictions on the bringing of actions covered by Article 11 of Directive 2011/92, analysis of which forms part of the second part of the second complaint.

53 Consequently, the first part of the second complaint is therefore well founded.

– The second part of the second complaint

54 In its first argument in support of the second part of the second complaint, the Commission alleges that the Federal Republic of Germany has made the annulment, by the court having jurisdiction, of an administrative decision which falls within the scope of Article 11 of Directive 2011/92 subject to there being a causal link between the procedural defect alleged and the outcome of the administrative decision in question.

55 The Court has previously held, in that regard, in essence, that it was not the intention of the EU legislature to make the possibility of invoking a procedural defect conditional upon that defect's having an effect on the purport of the contested final decision. Moreover, given that one of the objectives of Directive 2011/92 is, in particular, to put in place procedural guarantees to ensure the public is better informed of, and more able to participate in, environmental impact assessments relating to public and private projects likely to have a significant effect on the environment, it is particularly important to ascertain whether the procedural rules governing that area have been complied with. Therefore, as a matter of principle, in accordance with the aim of giving the public concerned wide access to justice, that public must be able to invoke any procedural defect in support of an action challenging the legality of decisions covered by that directive (see, to that effect, judgment in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs 47 and 48).

56 In the present action, it must be found that, in so far as Paragraph 46 of the VwVfG requires, in every case, even where there are procedural defects as regards informing the public and its participation in the area under consideration, a causal link between the procedural defect and the outcome of the

contested administrative decision in order that the court having jurisdiction may annul that decision, such a condition makes it excessively difficult to exercise the right to bring proceedings provided for in Article 11 of Directive 2011/92 and undermines the objective of that directive which seeks to provide 'members of the public concerned' with a broad access to justice.

57 To refuse annulment of an administrative decision adopted in breach of a procedural rule on the sole ground that the applicant is unable to establish the effect that defect has on the merits of that decision renders that provision of EU law totally ineffective.

58 As is apparent from paragraph 47 of this judgment, the Court has previously held that the EU legislature neither intended to restrict the pleas which may be raised in support of an action under a provision of national law which transposed Article 11 of Directive 2011/92 nor to link the possibility of alleging a procedural defect with the requirement that that defect have affected the tenor of the contested final decision.

59 Furthermore, the Court has also held that, with regard to the interpretation of the concept of 'impairment of a right' within the meaning of Article 11 of Directive 2011/92, and more particularly the requirement, laid down in the national law, that such impairment of a right can exist only if the contested decision would have been different without the procedural defect invoked, the shifting of the burden of proof onto the person bringing the action, in accordance with national law, for the application of the condition of causality, is capable of making the exercise of the rights conferred on that person by that directive excessively difficult, especially having regard to the complexity of the procedures in question and the technical nature of environmental impact assessments (see, to that effect, judgment in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 52).

60 It follows therefrom that the impairment of a right, for the purposes of Article 11 of Directive 2011/92 cannot be excluded unless the court of law or body covered by that article is in a position to take the view, without in any way making the burden of proof of causality fall on the applicant, but by relying, where appropriate, on the evidence provided by the developer or the competent authorities and, more generally, on the case-file documents submitted to that court or body, that the contested decision would not have been different without the procedural defect invoked by that applicant (see, to that effect, judgment in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 53).

61 Although it is true that those considerations relate to just one of the conditions for admissibility of legal proceedings, they remain relevant to any condition laid down by the national legislature which has the effect of restricting the review of the courts of the substance of the case.

62 It follows from the foregoing considerations that the requirement laid down in Paragraph 46 of the VwVfG, in so far as that provision places the burden of proof on the applicant 'member of the public concerned' that there is a causal link between the procedural defect which he alleges and the outcome of the administrative decision, constitutes an infringement of Article 11 of Directive 2011/92, so that the first argument raised by the Commission in support of the second part of the second complaint is well founded.

63 With regard to the second argument raised by the Commission in support of that part, it is not in dispute that, pursuant to Paragraph 113(1) of the VwGO, read in conjunction with Paragraph 46 of the VwVfG, where an environmental impact assessment act is affected by a procedural defect, the decision adopted at the end of such a procedure cannot be annulled by the national court hearing the action unless that procedural defect infringes an individual public-law right of the applicant.

64 It follows from paragraphs 30 to 34 of the present judgment that the condition laid down in Paragraph 113(1) of the VwGO, requiring the national court to find such an infringement before it may annul, if appropriate, the administrative decision at issue, does not run counter to Article 11 of Directive 2011/92 or Article 25 of Directive 2010/75

65 The same conclusion must be reached as regards the obligation on the national court under Paragraph 46 of the VwVfG, read in conjunction with Paragraph 113(1) of the VwGO.

66 Accordingly, the Commission's second argument raised in support of the second part of this complaint must be rejected.

67 It follows from the foregoing considerations that the second complaint raised by the Commission is well founded, with the exception of the argument alleging the requirement that there be an infringement of an individual public-law right of the applicant, in accordance with Paragraph 46 of the VwVfG, read in conjunction with Paragraph 113(1) of the VwGO.

The third complaint, alleging restriction of the standing to bring proceedings and the scope of the review by the courts to objections made during the administrative procedure

Arguments of the parties

68 The Commission is of the opinion that the restriction, in accordance with Paragraph 2(3) of the UmwRG and Paragraph 73(4) and (6) of the VwVfG, of the objections which may be raised in legal proceedings to those which were previously made in the administrative procedure runs counter to Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

69 That institution argues that such a restriction constitutes a disproportionate obstacle to the right of the public concerned to challenge the legality of administrative decisions in the areas covered by those directives. The national legislation providing for that restriction accordingly runs counter to the principle of access to justice and restricts the effective legal protection of that public. The EU legal order does not allow the admissibility of pleas raised during legal proceedings to be made subject to the fact that they were previously raised in the administrative procedure.

70 The Commission points out that judicial proceedings are independent proceedings, in the course of which it must be possible to carry out a full assessment of the legality of a decision. The admissibility of the pleas in law cannot be limited to pleas which have already been put forward in the short period prescribed for raising objections during the administrative procedure.

71 The Federal Republic of Germany argues that Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 allow Member States to retain the instruments of their judicial systems in the relevant field. The provisions called into question by the Commission seek to ensure legal certainty and efficient administrative procedures. Provisions prohibiting the raising of objections before the courts which were not raised during the administrative procedure form an integral part of such a system.

72 That Member State justifies the restriction on the ground that without it, objections known at the time of the administrative procedure could, for reasons of procedural tactics, be held back and reserved for the proceedings before the courts having jurisdiction. Thus, the administrative procedure would no longer be able to fulfil its particular function of reconciling interests. Such a restriction, moreover, complies with the principles of equivalence and effectiveness.

73 The Federal Republic of Germany also argues that that restriction does not make review by the courts more difficult or even, *a fortiori*, impossible, but, on the contrary, ensures that only relevant facts, set out in the fullest possible detail and with the greatest possible evidence, are subject to that review. Thus, only facts which the applicant has voluntarily omitted to adduce in the administrative procedure, with a view to hindering its successful outcome, are affected by that restriction.

74 The Republic of Austria submits that the provisions of EU law on which the present action is based not only contain no reference to rules on time-bars but refer, on the contrary, to the national law governing the administrative procedure. Thus, the Member States have a wide discretion to determine the rules applicable to the right to bring legal proceedings and to the organisation of an administrative procedure. In addition, the time-limit referred to in Paragraph 2(3) of the UmwRG and Paragraph 73(4) and (6) of the VwVfG is a means by which to ensure a rapid and efficient decision-making process.

Findings of the Court

75 Paragraph 2(3) of the UmwRG and Paragraph 73(4) and (6) of the VwVfG restrict the pleas in law which may be raised by an applicant in support of legal proceedings against an administrative decision falling within the scope of Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 to objections made during the administrative procedure.

76 In that regard, although, indeed, neither Article 11(4) of Directive 2011/92 nor Article 25(4) of Directive 2010/75 excludes an action before an administrative authority preceding the legal proceedings and does not prevent national law from requiring the applicant to exhaust all administrative review procedures before being authorised to bring legal proceedings, those provisions of EU law do not, however, allow restrictions on the pleas in law which may be raised in support of legal proceedings.

77 The Court has previously held that Article 11(1) of Directive 2011/92, pursuant to which the decisions, acts or omissions covered by that article must be subject to a review procedure before a court of law or another independent and impartial body established by law to challenge their substantive or procedural legality, lays down no restriction whatsoever on the pleas which may be relied on in support of such a review (see, to that effect, judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraph 37). That consideration meets the objective pursued by that provision of ensuring broad access to justice in the area of environmental protection.

78 Paragraph 2(3) of the UmwRG and Paragraph 73(4) of the VwVfG lay down specific conditions restricting the review by the courts which are not provided for in either Article 11 of Directive 2011/92 or Article 25 of Directive 2010/75.

79 Such a restriction laid on the applicant as to the nature of the pleas in law which he is permitted to raise before the court reviewing the legality of the administrative decision which concerns him cannot be justified by considerations of compliance with the principle of legal certainty. It is in no way established that a full review by the courts of the merits of that decision would undermine that principle.

80 As regards the argument concerning the efficiency of administrative procedures, although it is true that the fact of raising a plea in law for the first time in legal proceedings may, in certain cases, hinder the smooth running of that procedure, it is sufficient to recall that the very objective pursued by Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 is not only to ensure that the litigant has the broadest possible access to review by the courts but also to ensure that that review covers both the substantive and procedural legality of the contested decision in its entirety.

81 None the less, the national legislature may lay down specific procedural rules, such as the inadmissibility of an argument submitted abusively or in bad faith, which constitute appropriate mechanisms for ensuring the efficiency of the legal proceedings.

82 It follows that the third complaint raised by the Commission in support of its action is well founded.

The fourth and fifth complaints, alleging a time restriction on the standing to bring proceedings of environmental protection organisations and the scope of the review of the legality to those actions brought on the basis of infringement of provisions of national law which confer rights on individuals

Arguments of the parties

83 The Commission recalls that, in its letter of formal notice of 1 October 2012, it complained to the Federal Republic of Germany that the initial version of Paragraph 2(1) of the UmwRG was incompatible with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, since that version restricted the standing of environmental protection organisations to bring proceedings to actions brought on the basis of legal provisions conferring rights on individuals. Having regard to the 'parallelism' between the admissibility and the merits of the actions brought by those associations, the time restriction in question also restricts the scope of the review by the courts of the merits.

84 The Commission states that under Paragraph 1(2) of the UmwRG, as amended, which entered into force on 29 January 2013, following delivery of the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), the words 'confer rights on individuals' have been removed from the initial version of that provision. It follows therefrom that, contrary to the situation which prevailed until then, actions brought by environmental protection organisations are no longer restricted to situations where individual public rights are infringed.

85 The Commission points out, however, that the applicability of the UmwRG, as amended, is limited in time. Under Paragraph 5(1) and (4) of the UmwRG, as amended, only procedures which were still pending on 12 May 2011, the date on which the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289) was delivered, or which were initiated after that date but decisions on which had not become enforceable by 29 January 2013, the date on which the UmwRG, as amended, entered into force, must be brought to a close in accordance with the provisions of that law, as amended.

86 Thus, in the opinion of the Commission, as regards proceedings initiated after 25 June 2005 and closed before 12 May 2011, the standing to bring proceedings of environmental protection organisations remained restricted to actions brought on the basis of legal provisions which confer rights on individuals.

87 The Federal Republic of Germany is of the view that the UmwRG, as amended, complies with the principle of *res judicata*, in that that law does not apply to decisions arising from procedures concerning the approval of projects likely to be subject to the obligation to carry out an environmental assessment, if those decisions became enforceable before 15 December 2006, the date on which that law entered into force in its initial version.

88 The Federal Republic of Germany submits that the provisions of national law referred to in the fourth and fifth complaints comply with the requirements of EU law, their content being purely declaratory in nature and their purpose being to facilitate the administrative application of the law.

89 That Member State is of the opinion that in order to ensure both stability of the law and legal relations and the sound administration of justice, judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time-limits provided for in that connection must no longer be able to be called in question. Accordingly, a Member State is not required to provide for a mechanism to review such decisions which have the force of *res judicata*. This is also true of administrative procedures that have been closed, resulting in a decision against which an action has not even been brought before the courts, and that have, accordingly, resulted in an enforceable decision.

Findings of the Court

90 It must be borne in mind that, pursuant to Article 11(3) of Directive 2011/92 and Article 25(3) of Directive 2010/75, environmental protection organisations are deemed to have either a sufficient interest or rights which may be impaired, depending on which of those conditions governing the admissibility of actions is adopted by the national legislation (see, to that effect, judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraph 40).

91 Although the national legislature is entitled to confine to individual public-law rights the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 11 of Directive 2011/92, such a limitation cannot be applied as such to environmental protection organisations without disregarding the objectives of that provision (see, to that effect, judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraph 45).

92 Consequently, in judicial proceedings, those organisations must necessarily be able to rely on the rules of national law implementing EU environment law and the rules of EU environment law having direct effect (see, to that effect, judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraph 48).

93 As regards the fourth and fifth complaints, it must be noted that, in order to remedy the situation which gave rise to the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), the Federal Republic of Germany adapted its legislation and adopted the UmwRG, as amended. The new version of the UmwRG, which entered into force on 29 January 2013, has, however, a limited temporal scope. Indeed, that new legislation is limited to administrative procedures, approval procedures and appeal procedures which were in progress on 12 May 2011 or which were initiated after that date and have not yet been closed and resulted in an enforceable decision as of 29 January 2013.

94 It follows that all other procedures still fall within the scope of the former version of the UmwRG. Paragraph 5(1) of that law excludes from the law's scope procedures initiated before 15 December 2006, the date of entry into force of that law.

95 It follows, however, from the case-law of the Court that Article 11 of Directive 2011/92 must be interpreted as meaning that the provisions adopted by the legislature in order to transpose that article into the national legal order must also apply to administrative development consent procedures initiated before 25 June 2005 when they resulted in the granting of development consent after that date (see, to that effect, judgment in *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 31).

96 With regard to the principle of *res judicata* relied upon by the Federal Republic of Germany, it is true that the Court has recognised the importance, both in the legal order of the European Union and in national legal systems, of that principle. In order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time-limits provided for in that connection can no longer be called into question (see judgment in *Fallimento Olimpiclub*, C-2/08, EU:C:2009:506, paragraph 22 and the case-law).

97 None the less, it must be noted in that regard that the Federal Republic of Germany cannot rely on compliance with the principle of *res judicata* when the limits on temporal scope, provided for in Paragraph 5(1) and (4) of the UmwRG, as amended, read in conjunction with Paragraph 2(5) thereof, affect administrative decisions which have become enforceable.

98 Moreover, the fact that, following the late transposition into German law of Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17), which amended Directive 85/337 as regards public participation and access to justice, itself codified by Directive 2011/92, the Federal Republic of Germany restricted the temporal scope of the national provisions implementing the latter directive amounts to allowing that Member State to grant itself a new transposition period (see, by analogy, judgment in *Commission* v *Portugal*, C-277/13, EU:C:2014:2208, paragraph 45).

99 Accordingly, the argument of the Federal Republic of Germany that the limits on the temporal scope of the UmwRG were necessary in order to comply with the principle of *res judicata* as regards administrative procedures which have become definitive must be rejected.

100 The fourth and fifth complaints raised by the Commission in support of its action are, accordingly, well founded.

The sixth complaint, alleging a general exclusion from the scope of the UmwRG, as amended, of procedures initiated before 25 June 2005

Arguments of the parties

101 The Commission submits that the transitory provisions of Paragraph 5(1) and (4) of the UmwRG, as amended, are incompatible with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. Those provisions of the UmwRG, as amended, exclude from their scope any procedures initiated before 25 June 2005 and which were no longer pending as at 12 May 2011, even if the development consent arising from those procedures had been granted after 25 June 2005. It follows from paragraphs 30 and 31 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712) that the Member States may not restrict the application of those provisions of EU law exclusively to procedures initiated after 25 June 2005 alone.

102 The Federal Republic of Germany accepts that the procedures covered by the sixth complaint raised by the Commission cannot be excluded from the scope of the UmwRG, as amended. In consequence, a fresh amendment of that law is in the process of being drafted. However, that legislative amendment will probably be of minor importance since, as regards procedures which are still pending, the national courts having jurisdiction take account of the guidance in the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712).

Findings of the Court

103 Since the Federal Republic of Germany has accepted that the sixth complaint raised by the Commission is well founded, that complaint must be declared well founded.

104 In view of all the foregoing considerations, it must be found that:

by restricting:

— under Paragraph 46 of the VwVfG, the annulment of decisions on the ground of procedural defect to where there has been no environmental impact assessment or pre-assessment and to cases where the applicant establishes that there is a causal link between the procedural defect and the outcome of the decision;

— in accordance with Paragraph 2(3) of the UmwRG, as amended, and Paragraph 73(4) of the VwVfG, the standing to bring proceedings and the scope of the review by the courts to the objections which have already been raised within the time-limit set during the administrative procedure which led to the adoption of the decision;

— under Paragraph 5(1) of the UmwRG, as amended, in procedures initiated after 25 June 2005 and closed before 12 May 2011, the standing to bring proceedings of environmental associations to the legal provisions which confer individual public-law rights;

— in accordance with Paragraph 2(1), read in conjunction with Paragraph 5(4) of the UmwRG, as amended, in procedures which were initiated after 25 June 2005 and closed before 12 May 2011, the scope of the review by the courts of actions brought by environmental associations to the legal provisions which confer individual public-law rights, and

— by excluding, in accordance with Paragraph 5(1) and (4) of the UmwRG, as amended, from the scope of the national legislation administrative procedures initiated before 25 June 2005,

the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

Costs

105 Under Article 138(1) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has not sought an order as to costs, each party is to bear its own costs, including the Republic of Austria, in accordance with Article 140(1) of those Rules.

On those grounds, the Court (Second Chamber) hereby

1. Declares that, by restricting:

— under Paragraph 46 of the Law on Administrative Procedure (Verwaltungsverfahrensgesetz), the annulment of decisions on the ground of procedural defect to where there has been no environmental impact assessment or pre-assessment and to cases where the applicant establishes that there is a causal link between the procedural defect and the outcome of the decision;

— in accordance with Paragraph 2(3) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, the standing to bring proceedings and the scope of the review by the courts to the objections which have already been raised within the time-limit set during the administrative procedure which led to the adoption of the decision;

— under Paragraph 5(1) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, in procedures initiated after 25 June 2005 and closed before 12 May 2011, the standing to bring proceedings of environmental associations to the legal provisions which confer individual public-law rights;

— **in accordance with Paragraph 2(1), read in conjunction with Paragraph 5(4) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, in procedures which were initiated after 25 June 2005 and closed before 12 May 2011, the scope of the review by the courts of actions brought by environmental associations to the legal provisions which confer individual public-law rights, and**

— **by excluding, in accordance with Paragraph 5(1) and (4) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, as amended by the Law of 21 January 2013, from the scope of the national legislation administrative procedures initiated before 25 June 2005,**

— **the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment and Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control);**

2. **Dismisses the action as to the remainder;**

3. **Orders the European Commission, the Federal Republic of Germany and the Republic of Austria to bear their own costs.**

[Signatures]