



Reports of Cases

OPINION OF ADVOCATE GENERAL
KOKOTT
delivered on 23 May 2019¹

Case C-280/18

Alain Flausch and Others

v

Ypourgos Perivallontos kai Energeias and Others

(Request for a preliminary ruling
from the Symvoulío tis Epikrateias (Council of State, Greece))

(Request for a preliminary ruling — Environment — Directive 2011/92/EU — Assessment of the effects of certain public and private projects on the environment — Public participation in the decision-making process — Announcement on the internet — Access to justice — Commencement of periods)

I. Introduction

1. How can the public be informed that it is to participate, in the context of an environmental impact assessment, in the development consent procedure for a project? And how is information then to be provided that consent has been granted to the project? These questions are raised in the present case.

2. Although these questions appear at first sight to be rather technical and formalistic, they are of vital importance — in the same way as service in civil proceedings² — to the effectiveness of public participation and the application of legal protection. If it is not informed in a timely manner, the public concerned neither participates in the consent procedure nor avails itself of legal protection in good time. Because the specific details of these matters are regulated by the Member States, that is to say, their procedural autonomy applies, the framework in EU law in this regard is provided by the principles of equivalence and effectiveness.

II. Legal framework

A. The Aarhus Convention

3. Under paragraphs 4 and 5 of Article 2 ('Definitions') of the Aarhus Convention³

¹ Original language: German.

² See recently, for example, judgments of 16 September 2015, *Alpha Bank Cyprus* (C-519/13, EU:C:2015:603); of 2 March 2017, *Henderson* (C-354/15, EU:C:2017:157); and of 6 September 2018, *Catlin Europe* (C-21/17, EU:C:2018:675).

³ 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).

‘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; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.’

4. Article 6 of the Aarhus Convention contains rules on public participation:

‘1. Each Party

(a) shall apply the provisions of this article with respect to decisions on whether to permit proposed activities listed in Annex I;

(b) shall, in accordance with its national law, also apply the provisions of this article to decisions on proposed activities not listed in Annex I which may have a significant effect on the environment. To this end, Parties shall determine whether such a proposed activity is subject to these provisions; and

(c) ...

2. The public concerned shall be informed, either by public notice or individually as appropriate, early in an environmental decision-making procedure, and in an adequate, timely and effective manner, inter alia, of:

(a) the proposed activity and the application on which a decision will be taken;

(b) the nature of possible decisions or the draft decision;

(c) the public authority responsible for making the decision;

(d) the envisaged procedure, including, as and when this information can be provided:

(i) the commencement of the procedure;

(ii) the opportunities for the public to participate;

(iii) the time and venue of any envisaged public hearing;

(iv) an indication of the public authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public;

(v) an indication of the relevant public authority or any other official body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and

(vi) an indication of what environmental information relevant to the proposed activity is available; and

(e) the fact that the activity is subject to a national or transboundary environmental impact assessment procedure.

3. The public participation procedures shall include reasonable time-frames for the different phases, allowing sufficient time for informing the public in accordance with paragraph 2 above and for the public to prepare and participate effectively during the environmental decision-making.

4. Each Party shall provide for early public participation, when all options are open and effective public participation can take place.

...

7. Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity.

8. ...

9. Each Party shall ensure that, when the decision has been taken by the public authority, the public is promptly informed of the decision in accordance with the appropriate procedures. ...'

5. Article 9(2) of the Aarhus Convention governs access to justice in connection with public participation:

'Each Party shall, within the framework of its national legislation, ensure that members of the public concerned:

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

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. ...'

B. The EIA Directive

6. Recital 7 of the EIA Directive⁴ explains the connection between the environmental impact assessment and public participation:

'Development consent for public and private projects which are likely to have significant effects on the environment should be granted only after an assessment of the likely significant environmental effects of those projects has been carried out. That assessment should be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the public likely to be concerned by the project in question.'

⁴ 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).

7. Further explanations regarding public participation are set out in recital 16 of the EIA Directive:

‘Effective public participation in the taking of decisions enables the public to express, and the decision-maker to take account of, opinions and concerns which may be relevant to those decisions, thereby increasing the accountability and transparency of the decision-making process and contributing to public awareness of environmental issues and support for the decisions taken.’

8. Article 1(2) of the EIA Directive defines ‘public’ and ‘public concerned’ as follows:

- (d) “public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;
- (e) “public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest’.

9. Article 2(1) of the EIA Directive specifies which decision-making procedures are subject to the requirements of the directive:

‘Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. Those projects are defined in Article 4.’

10. The environmental impact assessment is described more fully in Article 3 of the EIA Directive:

‘The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on the following factors:

- (a) human beings, fauna and flora;
- (b) soil, water, air, climate and the landscape;
- (c) material assets and the cultural heritage;
- (d) the interaction between the factors referred to in points (a), (b) and (c).’

11. Article 6(2) to (5) of the EIA Directive contains the fundamental provisions concerning public participation:

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

- (a) the request for development consent;
- (b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

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

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

- (a) any information gathered pursuant to Article 5;
- (b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;
- (c) in accordance with the provisions of [the Environmental Information Directive⁵], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

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

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

12. Article 9(1) of the EIA Directive governs the announcement of the decision concerning a project:

‘When a decision to grant or refuse development consent has been taken, the competent authority or authorities shall inform the public thereof in accordance with the appropriate procedures ...’

13. Article 11 of the EIA Directive lays down rules on actions brought against decisions which are subject to public participation under the EIA Directive:

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

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

⁵ Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information (OJ 2003 L 41, p. 26).

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 the Member States, consistently with the objective of giving the public concerned wide access to justice. ...'

C. Greek law

14. Article 46 of Presidential Decree 18/1989 (Government Gazette I/8) lays down the period for bringing an action:

'Applications for annulment must be lodged within sixty days of the day after notification of the contested act or publication thereof where required by law or, alternatively, of the date on which the applicant obtained full knowledge of the act.'

15. In paragraph 8 of the order for reference, the referring court analyses the applicable provisions of Law 4014/2011 entitled 'Environmental permits for projects and activities, environmental regulation of buildings erected without planning permission and other provisions under the responsibility of the Ministry of the Environment, Energy and Climate Change' (Government Gazette I/209) and various implementing provisions.

16. Under Article 1(1) of Law 4014/2011, public and private-sector projects are classed in two categories (A and B), depending on their environmental impact. The first category (A) includes projects and activities which are likely to have significant effects on the environment and for which an environmental impact study (EIS) is required, so that specific conditions and restrictions can be imposed in order to protect the environment. The second category (B) includes projects with lesser effects on the environment.

17. Articles 3, 4 and 19 of Law 4014/2011 regulate public participation. Under Article 12 of Law 4014/2011, various approvals are to be collected together in a decision approving environmental conditions ('the approval decision').

18. Article 30(9) of Law 4014/2011 contains a transitional provision under which the current provisions governing official expert opinions and the public consultation procedure for environmental permits — which state that the procedure is initiated by posting in the office of the region concerned, and by publishing in the local press, an announcement of the details of the project together with an invitation to all interested parties to inspect and comment on the environmental impact study for the project — will remain in force pending the introduction of an electronic environmental register.

19. Under Article 19a of Law 4014/2011, the approval decision must be published on the internet within one month. If that time limit is not complied with, the approval is null and void. The second sentence of Article 19a(1) provides that publication on the special website is equivalent to the notification prescribed by law and gives grounds to assume that any person concerned has knowledge of it such that he can bring an action for annulment or other legal remedy. Joint Ministerial Decision 21938/2012 of the Minister for Administrative Reform and e-Government and the Minister for the Environment, Energy and Climate Change entitled 'Establishment and operation of a special website for publication of decisions approving environmental conditions (approval decisions) and decisions to renew or amend approval decisions in accordance with Article 19a of Law 4014/2011' (Government Gazette II/1470) regulates the implementation of that provision.

III. Facts and request for a preliminary ruling

20. The first decision contested in the national proceedings granted consent for the development of a tourist resort on the island of Ios (Greece) and approved the environmental conditions thereof. It comprises a 249-bed hotel, furnished tourist accommodation, a revitalisation spa and support works. The overall development covers a large tract of land and includes an area of the coast, beach and sea which is subject to public ownership.

21. On 2 August 2013, an announcement was made in a local newspaper published on the island of Syros (Greece), which is 55 nautical miles away, inviting interested parties to inspect and comment on the EIS for the project. The Court does not have any information on how widely that newspaper is circulated on Ios. At the same time, that announcement was posted in the offices of the region concerned on Syros, and the file containing the EIS was held and the consultation was carried out in Syros.

22. According to the undisputed claims made by the applicants in the main proceedings, the journey from Ios to Syros is generally a ferry trip lasting several hours, which would not appear to be offered on a daily basis.

23. The contested decision was adopted on 8 August 2014. It was posted on the DIAVGEIA (Transparency) website on 11 August 2014 and on the website of the Ministry of the Environment on 8 September 2014.

24. The application for annulment was eventually lodged on 19 February 2016, more than 18 months after the contested decision.

25. The applicants, three owners of holiday properties on the island of Ios and three associations, submit that they learned of the contested decision only on 22 December 2015, when they noticed works being carried out to develop the site for the tourist resort.

26. The company which holds the consent and permits, 105 Anonymi Touristiki kai Techniki Etaireia Ekmetallefsis Akiniton, has intervened in the proceedings and argues that, inasmuch as it is directed against the contested decision, the application for annulment is out of time because it was lodged more than 60 days after the decision was posted on the Ministry of the Environment website.

27. From these proceedings, the Symvoulío tis Epikrateias (Council of State, Greece) refers the following questions to the Court for a preliminary ruling:

- (1) Can Articles 6 and 11 of the EIA Directive, read in combination with the provisions of Article 47 of the Charter, be interpreted as meaning that provisions of national law as set out in paragraphs 8, 9 and 10 [of the order for reference] (see points 14 to 19 of this Opinion), in which it is laid down that procedures preceding the adoption of decisions approving environmental conditions for projects and activities with a significant environmental impact (publication of environmental impact studies, public information and participation in the consultation process) are to be initiated and conducted primarily by the wider administrative unit (region) and not by the municipality concerned, are compatible with those articles?
- (2) Can Articles 6 and 11 of the EIA Directive, read in combination with the provisions of Article 47 of the Charter, be interpreted as meaning that a system of provisions of national law as set out in the abovementioned paragraphs, which ultimately provides that publication of decisions approving the environmental conditions of projects and activities with a significant environmental impact, by means of posting them on a special website, creates a presumption of full knowledge on the part of every interested party for the purpose of exercising the legal remedy available under current legislation within a period of sixty (60) days, is compatible with those articles, bearing in mind

the legislative provisions governing publication of environmental impact studies and public information and participation during the procedure to approve the environmental conditions of those projects and activities, which provisions place the wider administrative unit (region), rather than the municipality concerned, at the centre of those procedures?’

28. Written observations have been submitted by Mr Flausch, Mr Bosco and Mr Albrespy and the associations Somateio ‘Syndesmos Iiton’ (Association of the People of Ios), Somateio ‘Elliniko Diktyo — Filoi tis Fysis’ (Naturefriends Greece) and Somateio ‘Syllogos Prostatias kai Perithalpsis Agrias Zois — SPPAZ’ (Association for the Protection and Welfare of Wildlife — SPPAZ), jointly as applicants in the main proceedings, 105 Anonymi Touristikí kai Techniki Etaireia Ekmatallefsis Akiniton, as intervener in support of the defendant authorities in the main proceedings, the Hellenic Republic and the European Commission. They also took part in the hearing on 27 March 2019.

IV. Legal assessment

29. By its questions the Council of State wishes to ascertain whether the public participation procedure in connection with the adoption of the contested development consent was compatible with the requirements of the EIA Directive and whether the period for bringing an action against that consent was set in motion by its publication on a website.

30. Articles 6, 9 and 11 of the EIA Directive have particular relevance in this regard. Those provisions must be interpreted in the light of the Aarhus Convention,⁶ to whose implementation they contribute.⁷ The practice of the Aarhus Convention Compliance Committee (ACCC),⁸ which has been accepted by the parties to that convention, including the European Union, and the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters,⁹ which were commissioned by the parties to that convention, of which they have taken note¹⁰ and which they have recognised,¹¹ thus offer useful guidance in assessing the points raised.

A. Public participation

31. The first question does, in principle, cover the compatibility with Articles 6 and 11 of the EIA Directive and Article 47 of the Charter of Fundamental Rights of all the amended Greek rules on public participation, that is to say, the publication of environmental impact studies and public information and consultation. Specifically, however, the question merely seeks to ascertain whether it is lawful that these procedural steps are to be initiated and conducted primarily by the wider administrative unit of the region and not by the municipality concerned.

6 Judgments of 8 March 2011, *Lesoochránárske zoskupenie* (C-240/09, EU:C:2011:125, paragraph 42); of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 41); and of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:C:2018:185, paragraph 50).

7 Recitals 18 to 21 of the EIA Directive and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17).

8 With regard to this Committee, see my Opinion in *Edwards* (C-260/11, EU:C:2012:645, point 8). See also Opinions of Advocates General Cruz Villalón in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:422, point 101), Jääskinen in joined cases *Council v Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht* (C-401/12 P to C-403/12 P, EU:C:2014:310, point 114 and footnote 117) and in joined cases *Council and Commission v Stichting Natuur en Milieu and Pesticide Action Network Europe* (C-404/12 P and C-405/12 P, EU:C:2014:309, point 23 and footnote 23), and Bobek in *Folk* (C-529/15, EU:C:2017:1, point 86).

9 UNECE, ECE/MP.PP/2014/2/Add.2. (Geneva, 2015).

10 Fifth Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Maastricht, Netherlands, 30 June to 2 July 2014, Decision V/2 on public participation in decision-making, paragraph 2, ECE/MP.PP/2014/2/Add.1.

11 Sixth Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Budva, Montenegro, 11 to 13 September 2017, Decision VI/2 — Promoting effective public participation in decision-making, paragraph 2, ECE/MP.PP/2017/2/Add.1.

32. The Court could give the relatively short answer to this specific question that the EIA Directive does not make any provision as to which level or subdivision of the national administration is responsible for the environmental impact assessment.

33. Although the Court has set out, in connection with the strategic environmental assessment, certain requirements relating to the autonomy of authorities consulted in the context of a strategic environmental assessment,¹² that is not the situation in this case.

34. Rather, the specific question is raised against the background of the course of the public participation procedure in the main proceedings. It is characterised by the fact that the procedure was not conducted on the island of Ios, where the project in question is being developed, but at the seat of the regional administration on the island of Syros, which is 55 nautical miles from Ios and requires a crossing of several hours which is not offered every day. The public announcement explaining how to participate was made in a newspaper published on Syros and was posted in the offices of the region concerned, which are also on Syros, one year prior to the contested consent; the file containing the EIS was held on Syros and the consultation was carried out there.

35. I therefore understand the question as seeking to establish whether those arrangements for public participation satisfy the requirements of the EIA Directive, in particular Article 6. Thus, on the basis of the request for a preliminary ruling, three aspects would appear to be of particular interest: first, public information and consultation regarding the project, second, the place where the public concerned could have access to information about the project and, third, the place of the consultation.

1. Public information

36. Under Article 6(2) of the EIA Directive, the public is to be informed, whether by public notices or by other appropriate means such as electronic media where available, in environmental decision-making procedures.

(a) The group of persons to whom the information is addressed

37. The version of Article 6(2) of the EIA Directive applicable in this case, unlike the version now applicable, does not refer to the *public concerned* being informed, but more broadly the public at large.

38. However, because of the legislative context and the objective of providing information, it is of crucial importance that the public concerned is informed, as that group enjoys rights to participate under Article 6(3) and (4) of the directive. Accordingly, Article 6(2) of the Aarhus Convention also requires that only the public concerned is informed.

39. In contrast, informing a group of persons wider than the public concerned, the public at large, merely has a supplementary function.

40. This objective is of crucial importance. Although the public concerned is a smaller group than the public at large, precisely because of this greater limitation the target group for the information is more clearly defined. Whilst in the case of informing the public at large it is not really possible to develop criteria to determine whether the methods chosen are sufficient, this is very much easier in the case of informing the public concerned.

¹² Judgment of 20 October 2011, *Seaport (NI) and Others* (C-474/10, EU:C:2011:681, paragraphs 39 and 42). See also Article 9a of the EIA Directive as amended by Directive 2014/52 and Findings and recommendations of the ACCC of 24 September 2010, Belarus (ACCC/C/2009/37; ECE/MP.PP/2011/11/Add.2, paragraph 80) with regard to the role of the project developer.

41. Under Article 1(2)(e) of the EIA Directive, the public concerned includes the public affected or likely to be affected by, or having an interest in, environmental decision-making procedures and non-governmental organisations promoting environmental protection and meeting any requirements under national law. Under point (d), the public means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups.

42. It should be relatively simple to identify the non-governmental organisations to be informed since they are, as a rule, officially registered. However, the group of persons affected or having an interest depends on the project at issue.¹³

43. In the main proceedings, if, first and foremost, the area surrounding the project is affected or has an interest, that would mean that at least some, if not all the inhabitants of the island of Ios would be affected. Furthermore, consideration could also be given to those affected by tourist traffic generated by the project or other impacts such as waste disposal or water supply. The EIS should be very useful in identifying those groups.

(b) The information procedure

44. Once the public concerned has been established, in a further step the appropriate means of communicating the information must be identified.

45. Article 6(2) of the EIA Directive provides that the information is to be communicated by public notices or by other appropriate means such as electronic media where available. The detailed arrangements for informing the public (for example by bill posting within a certain radius or publication in local newspapers) are to be determined, under Article 6(5), by the Member States. These provisions could be construed as meaning that the EU legislature considers a public announcement to be sufficient in principle.

46. However, Article 6(2) of the Aarhus Convention provides that the public concerned is to be informed, either by public notice or individually as appropriate, at an early stage and in an adequate, timely and effective manner. It can be inferred from this that the other appropriate means mentioned in Article 6(2) of the EIA Directive can also include informing the individual.¹⁴

47. However, neither EU law nor the Aarhus Convention contains precise rules on the form in which information is to be communicated. Rather, Article 6(5) of the EIA Directive charges the Member States with determining the detailed arrangements for informing the public.

48. As the parties also explain, this reflects the procedural autonomy of the Member States. Accordingly, the rules of the Member States may not be less favourable than those governing similar domestic situations (principle of equivalence) and they may not render impossible in practice or excessively difficult the exercise of rights conferred by the EU legal order (principle of effectiveness).¹⁵

¹³ See Findings and recommendations of the ACCC of 7 March 2008, Lithuania (ACCC/C/2006/16, ECE/MP.PP/C.1/2008/5/Add.6, paragraph 67), and of 24 September 2013, European Union and United Kingdom (ACCC/C/2012/68, ECE/MP.PP/C.1/2014/5, paragraph 97), and the Maastricht Recommendations (cited in footnote 9, paragraph 59).

¹⁴ Thus, under the United Kingdom Town and Country Planning (Environmental Impact Assessment) Regulations 2017, submitted by Flausch and Others, particular persons having an interest who would not be reached by a general announcement must be notified individually; see regulations 20(3) and 11(2), 12(5), 13(5) or 14(6).

¹⁵ 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).

(1) *The principle of equivalence*

49. In relation to the principle of equivalence, the request for a preliminary ruling raises the particular question whether the distinction made in Greek law between certain larger projects (category A) and other, generally smaller projects (category B) is justified.

50. In this regard, it would appear from the request for a preliminary ruling that public participation for category B projects is conducted not by the regional authorities, but by the local authorities. The public would thus be informed by a local notice posted at the local authorities on Ios.

51. It is nevertheless understandable that responsibility for larger projects, whose effects on the environment are as a rule not just local, be given to the regional authorities. An infringement of the principle of equivalence cannot therefore be established.

(2) *The principle of effectiveness*

52. The principle of effectiveness holds more interest. Informing the public is essential if they are to be able effectively to exercise their rights to participate. If someone is not informed, he has no reason to seek further information about the project, to participate in the decision-making procedure or to avail himself of legal protection in good time.¹⁶

53. It cannot therefore be sufficient to employ any means of information if it is not ensured that the public concerned is actually reached. Rather, the information must give the public concerned a reasonable chance to learn about decision-making on proposed activities and how they can participate.¹⁷ Only in this way is it possible to achieve the objective of Article 6(4) of the EIA Directive of giving the public concerned effective opportunities to participate in the decision-making procedure.

54. Where there are established information channels whose effectiveness is known from past experience, these should be used. If there are not, it must be examined by which information channels those persons can be reached. Possibilities include not only local, but also national newspapers, radio and television,¹⁸ the internet, notices¹⁹ and even notifications to individuals.²⁰

55. It is ultimately for the national court to determine whether public information in the main proceedings satisfied these requirements.

56. It should be noted, however, that a notice at the seat of the regional administration on Syros could make only a very limited contribution to informing the public concerned, as the majority of the members of that public were on Ios and it seems doubtful that they had a timely opportunity to become aware of that notice. Such a notice on its own would render excessively difficult the exercise of the rights to participate.

¹⁶ See Findings and recommendations of the ACCC of 18 February 2005, Kazakhstan (ACCC/C/2004/2, ECE/MP.PP/C.1/2005/2/Add.2, paragraph 24).

¹⁷ See Findings and recommendations of the ACCC of 7 March 2008, Lithuania (ACCC/C/2006/16, ECE/MP.PP/C.1/2008/5/Add.6, paragraph 67), and of 3 July 2009, France (ACCC/C/2007/22, ECE/MP.PP/C.1/2009/4/Add.1, paragraph 41), and the Maastricht Recommendations (cited in footnote 9, paragraph 59).

¹⁸ Findings and recommendations of the ACCC of 31 March 2006, Armenia (ACCC/C/2004/8, ECE/MP.PP/C.1/2006/2/Add.1, paragraph 70).

¹⁹ Findings and recommendations of the ACCC of 7 March 2008, Lithuania (ACCC/C/2006/16, ECE/MP.PP/C.1/2008/5/Add.6, paragraph 67).

²⁰ Under the United Kingdom Town and Country Planning (Environmental Impact Assessment) Regulations 2017, submitted by Flausch and Others, particular persons having an interest who would not be reached by a general announcement must be notified individually; see regulations 20(3) and 11(2), 12(5), 13(5) or 14(6). According to the Findings and recommendations of the ACCC of 19 June 2017, Spain (ACCC/C/2014/99, ECE/MP.PP/C.1/2017/17, paragraph 58), similar provision would also appear to be made in certain cases in the Spanish region of Catalonia.

57. The question whether publication in a local newspaper constituted sufficient information for the public would have to be assessed having particular regard to its circulation on Ios. If it transpired that the chosen newspaper or even merely the issue in question was not read on Ios or was read only to a very limited extent, it would likewise be doubtful that the public concerned had been informed effectively.

58. In assessing whether certain means of information satisfy the principle of effectiveness and do not excessively restrict the exercise of the rights to participate of the public concerned, however, the material factor is whether there are more effective means of information which could have been used without disproportionate effort. If there are no such means of information or they have no guarantee of success, it is more acceptable to opt for means with limited effectiveness, as the EIA Directive and the Aarhus Convention do not demand the impossible.

59. In the main proceedings, however, such other means of information cannot be ruled out *prima facie*. The local public on Ios could have been reached relatively easily by means of announcements in local administrative bodies on Ios, in central locations, such as the harbour or markets, and at the site of the project.

60. The Greek Government even raises the possibility that such additional communication channels were used. It would therefore have to be examined, as the case may be, whether the public concerned was in fact adequately informed in that manner.

61. Significant doubts that the public concerned was adequately informed arise because, according to the information available to the Court, members of that public seemingly did not submit comments in the case at issue.²¹ Nor was the Greek Government able to state at the hearing before the Court whether the public concerned had submitted comments during the consent procedure.

62. It must therefore be stated that Article 6(2) of the EIA Directive requires information which gives the public affected by the project in question a reasonable chance at an early stage and in advance to learn about decision-making on proposed activities and how they can participate.

2. The provision of information

63. According to the request for a preliminary ruling, further concerns stem from the fact that information regarding the project was not available on Ios, but only on Syros.

64. Under Article 6(3) of the EIA Directive, Member States must ensure that, within reasonable time frames, information regarding the project is made available to the public concerned.

65. In the absence of more precise rules, the conditions for such access are also subject to the procedural autonomy of the Member States, limited by the principles of effectiveness and equivalence.

66. With regard to the principle of equivalence, it is stressed that information regarding smaller projects in category B is available locally, but information on larger projects in category A with more extensive effects on the environment only further away, at the seat of the regional administration. Nevertheless, here too, it is understandable that the regional administration has responsibility for larger projects.

67. The difficulties in accessing information are rather a matter for the principle of effectiveness.

²¹ Findings and recommendations of the ACCC of 28 June 2013, United Kingdom (ACCC/C/2011/61; ECE/MP.PP/C.1/2013/13, 23, paragraph 59).

68. It is clear that access to information regarding the project is very important to effective participation in the decision-making procedure. However, if the public concerned was adequately informed about the procedure, it can reasonably be expected to make a certain effort in relation to access to information.

69. Nevertheless, the competent authorities must, in connection with the conditions for access to information regarding the project, ensure proportionality between the interests of the public and the effort associated with providing information.

70. It is again ultimately for the national court to verify whether the conditions for access to project information in the main proceedings were in fact appropriate.

71. First, an important aspect is the effort required of members of the public concerned in consulting the project information, in particular the duration and cost of the return trip between Ios and Syros, if, contrary to the submissions made by Greece, the information was not in fact available on Ios.

72. Second, account must be taken of the effort that would have been required of the authorities if they had facilitated less onerous access to the project information for the public concerned. Conceivable options include, for example, providing the information on Ios, where the project is being realised and the majority, if not all, members of the public concerned are resident, or electronically on the internet.

73. It is apparent that, in particular, the effort involved in providing information locally would not be disproportionate since, according to Greece, the public is also able to access the project information at the municipality where the project is to be realised,²² which is, moreover, consistent with the Maastricht Recommendations.²³

74. In conclusion, it must therefore be stated that in establishing the arrangements for providing information pursuant to Article 6(3) of the EIA Directive the burden on members of the public concerned in connection with the exercise of the right of access must be proportionate to the effort required of the authorities.

3. The place of consultation

75. Lastly, the request for a preliminary ruling expresses reservations over conducting the consultation on Syros.

76. The starting point in assessing this point is Article 6(4) of the EIA Directive. Under that provision, the public concerned are to be given early and effective opportunities to participate in the environmental decision-making procedures concerned. The detailed arrangements for consulting the public concerned (for example by written submissions or by way of a public inquiry) are likewise to be determined, under Article 6(5), by the Member States.

77. The question whether these arrangements for public participation are consistent with the EIA Directive must be assessed in a similar manner to the arrangements for providing information.

²² Paragraph 51 of the observations.

²³ Cited in footnote 9, paragraph 92(a).

78. Some guidance in this regard is offered by a judgment of the Court according to which the levying of an administrative fee for participation of the public in certain environmental impact assessments is in itself compatible with the purpose of the EIA Directive. However, the Court also stated that fees cannot be fixed at a level which would be such as to prevent the directive from being fully effective, in accordance with the objectives pursued by it.²⁴

79. It is thus of particular interest in making this assessment whether the arrangements for public participation impair the full effectiveness of the EIA Directive.

80. Such impairment would have to be taken to exist if the members of the public concerned were in fact compelled to travel to Syros on a certain date in order to participate in the procedure. Participation in written or electronic form, which was actually possible according to Greece²⁵ and is expressly mentioned as a possible form of participation in Article 6(4) of the EIA Directive,²⁶ would also entail much less effort for all parties involved.

81. Therefore, the arrangements for consultation of the public concerned under Article 6(4) of the EIA Directive must ensure the proportionality of the burden on members of the public concerned in connection with participation in the procedure with the effort required of the authorities.

B. Initiation of the period for bringing an action

82. The second question asked by the Council of State seeks to ascertain whether, in the light of the answer to the first question, rules, under which publication of the project consent on a special website sets in motion a period of 60 days for bringing an action, are compatible with Articles 6 and 11 of the EIA Directive and Article 47 of the Charter.

1. Admissibility of the second question

83. It must first be considered whether this question is actually relevant to the decision and thus admissible as, according to the request for a preliminary ruling, in the case of actions which, like the action in the main proceedings, were brought before 12 April 2017, it can be shown that, in addition to the statutory expiry of the period, the applicant learned of the contested act only subsequently. I understand this to mean that in such cases the period for bringing an action commences only once knowledge has actually been obtained.

84. As the applicants in the main proceedings plausibly argue that they learned of the consent only when construction works commenced and the comments made in reply to the first question support this submission, it could be assumed that the answer to the second question will not be material in the national proceedings.

85. On the other hand, the Council of State also asserts that the date of actual knowledge may not be unreasonably long after the date prescribed by law, that is, the date of announcement on the internet. It cannot therefore be ruled out that in the main proceedings the Council of State tends to regard the failure to comply with the statutory period by one and a half year as unreasonable.

86. Because, in case of doubt, it must be presumed that a request for a preliminary ruling is relevant,²⁷ this question is therefore admissible.

²⁴ Judgment of 9 November 2006, *Commission v Ireland* (C-216/05, EU:C:2006:706, paragraphs 42 and 43).

²⁵ Paragraph 51 of the observations.

²⁶ See also Article 6(7) of the Aarhus Convention.

²⁷ Judgments of 31 May 2018, *Zheng* (C-190/17, EU:C:2018:357, paragraph 21), and of 4 October 2018, *Link Logistik N&N* (C-384/17, EU:C:2018:810, paragraph 35).

2. Answer to the second question

87. The EIA Directive does not make any provision as to whether the period for bringing an action against consent for a project can be set in motion by the announcement of the project on the internet.

88. Under Article 9(1) of the EIA Directive, the competent authority or authorities must inform the public of the decision to grant or refuse development consent in accordance with the appropriate procedures. Article 9(1) does contain further requirements in respect of the content of the announcement, but no specific rules regarding the procedure.

89. The possible bases for an action against the project consent, whether Article 11 of the EIA Directive, the direct effect of provisions of the directive²⁸ or Article 9(3) of the Aarhus Convention read in conjunction with Article 47 of the Charter of Fundamental Rights,²⁹ also do not regulate whether announcement on the internet can set in motion a period for bringing an action.

90. The procedural autonomy of the Member States thus applies with regard to both points, that is, the period for bringing an action and the announcement procedure, subject to the limits of the principles of equivalence and effectiveness.

(a) The principle of equivalence

91. In this respect too, the distinction between larger and smaller projects is important. Only for category A projects is it provided that announcement on the internet sets in motion the period for bringing an action. For category B projects, on the other hand, the period for bringing an action is set in motion by actual knowledge of the consent.

92. The size and importance of the projects in question is invoked as a ground both for and against that distinction. On the one hand, it is questionable that access to justice is made more restrictive for projects with more significant effects on the environment. On the other hand, emphasis is placed on the special importance and limited number of larger projects, which justifies a difference in treatment.

93. In the final analysis, it is justified in principle to introduce a new method of announcement and, alongside it, new rules on the course of the period for bringing an action only for larger projects. First, the limited number of such projects makes it easier to test those methods.³⁰ Second, because of the volume of investment in these projects there is a greater interest in legal certainty and, third, the public concerned in the case of larger projects naturally encompasses a wider group of persons. If the period for bringing an action were not set in motion when an announcement is made, but only on the basis of actual knowledge, it could not readily be predicted when actions are no longer possible.

94. No infringement of the principle of equivalence is therefore evident.

(b) The principle of effectiveness

95. According to the principle of effectiveness, the exercise of rights conferred by the EU legal order may not be rendered impossible in practice or excessively difficult.

²⁸ 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).

²⁹ Judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987, paragraph 46).

³⁰ See judgment of 16 December 2008, *Arcelor Atlantique et Lorraine and Others* (C-127/07, EU:C:2008:728, paragraphs 60 and 61).

96. In this regard, it is necessary to examine, first, publication on the internet and, second, the course of periods for bringing an action.

(1) *Publication on the internet*

97. The announcement of the consent on the internet is compatible with the principle of effectiveness as such.

98. The applicants in the main proceedings rightly submit that around 10 years ago the Court expressed doubts in the field of consumer protection over whether using the internet exclusively is compatible with the principle of effectiveness.³¹ Even today there may still be areas where the internet is not yet used widely enough to be able to rely on it.³²

99. However, in the main proceedings, at least, there is no indication that announcement on the internet, compared with other forms of announcement, renders excessively difficult the exercise of rights. On the contrary, the *Official Journal of the European Union* is also published in electronic form on the internet; in principle, nowadays only that version is authentic and produces legal effects.³³ Furthermore, Article 6(2) of the EIA Directive also mentions electronic media as a means of communication in connection with informing the public. For that reason, this method must also be available to Member States.

(2) *The period for bringing an action*

100. For reasons of legal certainty, it is lawful in principle to make the possibility of bringing an action against a measure dependent on compliance with a period.³⁴

101. In particular, the Court does not consider it an excessive impairment if the course of a period for bringing an action is made dependent on an announcement of which the person concerned was aware or at least ought to have been aware.³⁵ It would be incompatible with the principle of effectiveness, however, to rely on a period against a person if the conduct of the national authorities in conjunction with the existence of the period had the effect of totally depriving him of the opportunity to enforce his rights before the national courts,³⁶ that is to say, where, by their conduct, the authorities were responsible for the delay in the application.³⁷

102. The Council of State must therefore examine whether the conduct of the Greek authorities deprived the applicants of the opportunity to enforce their rights and in particular whether, by their conduct, the authorities were responsible for the delay in the application.

31 Judgment of 18 March 2010, *Alassini and Others* (C-317/08 to C-320/08, EU:C:2010:146, paragraph 58). See also my Opinion in that case (EU:C:2009:720, point 52), Findings and recommendations of the ACCC of 31 March 2006, Armenia (ACCC/C/2004/8, ECE/MP.PP/C.1/2006/2/Add.1, paragraph 31), and of 19 June 2017, Spain (ACCC/C/2014/99, ECE/MP.PP/C.1/2017/17, paragraph 58) and the Maastricht Recommendations (cited in footnote 9, paragraph 141).

32 See Findings and recommendations of the ACCC of 31 March 2006, Armenia (ACCC/C/2004/8, ECE/MP.PP/C.1/2006/2/Add.1, paragraph 31).

33 Article 1 of Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ 2013 L 69, p. 1).

34 Judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral* (33/76, EU:C:1976:188, paragraph 5); of 17 November 1998, *Aprile* (C-228/96, EU:C:1998:544, paragraph 19); of 30 June 2011, *Meilicke and Others* (C-262/09, EU:C:2011:438, paragraph 56); and of 17 November 2016, *Stadt Wiener Neustadt* (C-348/15, EU:C:2016:882, paragraph 41). See also Findings and recommendations of the ACCC of 24 September 2010, United Kingdom (ACCC/C/2008/33, ECE/MP.PP/C.1/2010/6/Add.3, paragraph 138).

35 Judgment of 28 January 2010, *Uniplex (UK)* (C-406/08, EU:C:2010:45, paragraph 32); see also Findings and recommendations of the ACCC of 24 September 2010, United Kingdom (ACCC/C/2008/33, ECE/MP.PP/C.1/2010/6/Add.3, paragraph 138).

36 Judgments of 15 September 1998, *Edis* (C-231/96, EU:C:1998:401, paragraph 48); of 17 November 1998, *Aprile* (C-228/96, EU:C:1998:544, paragraph 43); of 15 April 2010, *Barth* (C-542/08, EU:C:2010:193, paragraph 33); of 8 September 2011, *Q-Beef and Bosschaert* (C-89/10 and C-96/10, EU:C:2011:555, paragraph 51); and of 21 December 2016, *TDC* (C-327/15, EU:C:2016:974, paragraph 104).

37 Judgment of 19 May 2011, *Iaia and Others* (C-452/09, EU:C:2011:323, paragraph 21).

103. In the view of Greece and 105 Anonymi Touristikí kai Techniki Etaireia Ekmetallefsis Akiniton, in essence, everyone ought to have known about the rules on announcements regarding development consents on the internet and consequently the applicants in the main proceedings also ought to have known about the information on the contested consent.

104. However, insufficient account is taken in this regard of the context of an action brought against consent for a project which is subject to an environmental impact assessment. Such consent, first, requires further information regarding the project in connection with public participation under Article 6 of the EIA Directive. Second, wide access to justice is to be granted in respect of the action under Article 11 of the EIA Directive.

Public participation

105. Public participation is important, above all, because the public concerned are able to rely on the fact that consent is granted to a project which is subject to an environmental impact assessment only on the basis of public participation in accordance with Article 6 of the EIA Directive. This includes in particular information on the consent procedure which gives the public affected by the project in question a reasonable chance at an early stage and in advance to learn about decision-making on proposed activities and how they can participate.³⁸ If members of the public concerned were not informed about the procedure, they cannot expect that consent will be granted and announced for a project affecting them.

106. It is doubtful in this case whether the mere fact that *ex post* a decision is available on a certain website is sufficient to satisfy the information requirements under Article 9 of the EIA Directive.³⁹ As the applicants in the main proceedings convincingly argue, there must be a reason to check on a website whether a decision has been posted which might affect their own situation.

107. It is therefore incompatible with Articles 9 and 11 of the EIA Directive to rely on a period for bringing an action which was set in motion by the announcement of the consent on the internet against members of the public concerned who did not have actual knowledge of the project consent unless they were given a reasonable chance in accordance with Article 6(2) of the directive to learn in advance about the consent procedure.

Wide access to justice

108. This conclusion is consistent with the objective of wide access to justice.

109. The first sentence of Article 11(3) of the EIA Directive (and Article 9(2) of the Aarhus Convention) lays down the objective of giving the public concerned wide access to justice. That sentence concerns the determination by the Member States of what constitutes a sufficient interest and impairment of a right in connection with action under Article 11 of the directive.

³⁸ See above, point 62.

³⁹ Findings and recommendations of the ACCC of 31 March 2006, Armenia (ACCC/C/2004/8, ECE/MP.PP/C.1/2006/2/Add.1, paragraph 31), and of 19 June 2017, Spain (ACCC/C/2014/99, ECE/MP.PP/C.1/2017/17, paragraph 58), and the Maastricht Recommendations (cited in footnote 9, paragraph 141).

110. However, the Court has rightly taken this objective into consideration not only in relation to the question of sufficient interest or an impairment of a right,⁴⁰ but also in connection with the criteria on the basis of which environmental organisations are to be recognised,⁴¹ whether the costs for judicial proceedings are excessive,⁴² the extent to which procedural defects in carrying out the environmental impact assessment may be relied on⁴³ and in particular with regard to the effectiveness of the remedy sought.⁴⁴

111. Consequently, the objective of wide access to justice is to be taken into account in assessing whether a period for bringing an action which is set in motion by the announcement of the project consent on the internet renders excessively difficult the exercise of the rights under Article 11 of the EIA Directive. It would, however, be incompatible with that objective if the period for bringing an action were set in motion by an announcement which the public concerned could not expect on account of inadequate information regarding the consent procedure.

The applicability of Article 11 of the EIA Directive

112. This conclusion also cannot be invalidated by the judgment in *North East Pylon Pressure Campaign and Sheehy*.⁴⁵ It is true that the Court ruled in that judgment that the scope of Article 11(1) of the EIA Directive is limited to the aspects of a dispute which concern the public's right to participate in decision-making in accordance with the detailed rules laid down by the directive.⁴⁶ Challenges based on any other rules set out in that directive and, a fortiori, on any other legislation, whether of the European Union or the Member States, are excluded, on the other hand.⁴⁷

113. This finding could be understood to mean that an action could be brought under Article 11(1) of the EIA Directive solely against decisions directly connected with the arrangements for public participation, but not against the project consent per se. An action against the project consent could accordingly be based only on the direct effect of provisions of the EIA Directive⁴⁸ or on Article 9(3) of the Aarhus Convention read in conjunction with Article 47 of the Charter of Fundamental Rights.⁴⁹

114. Such a reading of that case-law is not convincing, however.

115. Restricting the action provided for in Article 11 of the EIA Directive to matters of public participation, without prejudice to the legality of consent, would render it meaningless and ineffective. Public participation is not an end in itself and that is also true of the challenge. Instead, the public concerned has an interest above all because it is able thereby to influence the project consent and its effects.

116. The relevant provisions thus also establish an inseparable link between the action under Article 11 of the EIA Directive and the project consent.

40 Judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 46), and of 16 April 2015, *Gruber* (C-570/13, EU:C:2015:231, paragraphs 36 and 39).

41 Judgment of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening* (C-263/08, EU:C:2009:631, paragraph 45).

42 Judgments of 11 April 2013, *Edwards and Pallikaropoulos* (C-260/11, EU:C:2013:221, paragraphs 31 and 44), and of 17 October 2018, *Klohn* (C-167/17, EU:C:2018:833, paragraph 35).

43 Judgments of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraphs 37, 43, 46, 48 and 49), and of 15 October 2015, *Commission v Germany* (C-137/14, EU:C:2015:683, paragraphs 48 and 55).

44 Judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraphs 58 and 72).

45 Judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:C:2018:185).

46 Judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:C:2018:185, paragraph 36).

47 Judgment of 15 March 2018, *North East Pylon Pressure Campaign and Sheehy* (C-470/16, EU:C:2018:185, paragraph 39).

48 See 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).

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

117. Under Article 11(1), certain members of the public concerned are given 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 subject to the public participation provisions of the directive.

118. Consent for a project requiring an environmental impact assessment is a decision subject to the public participation provisions.

119. Under Article 2(1) of the EIA Directive, Member States must make the projects defined in Article 4 likely to have significant effects on the environment by virtue, *inter alia*, of their nature, size or location, subject to a requirement for development consent and adopt all measures necessary to ensure that they are made subject to an assessment with regard to their effects.

120. Under Article 3 of the EIA Directive, the environmental impact assessment must identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 12, the direct and indirect effects of a project on certain environmental factors. The public participation provided for in Article 6 is part of that identification, description and assessment procedure and under Article 8 must be taken into consideration in the development consent procedure.

121. This link between the action and consent follows even more directly from Articles 6 and 9(2) of the Aarhus Convention. Under Article 6(1)(a) and (b), the public participation procedure is applied to consent for activities under Annex I and to decisions on other proposed activities which may have a significant effect on the environment. In addition, Article 9(2) provides for a challenge of the substantive and procedural legality of any decision, act or omission subject to the provisions of Article 6.⁵⁰

122. Accordingly, the Court has ruled that the right to challenge under Article 11 of the EIA Directive, after it was first introduced, applied to administrative development consent procedures initiated before the expiry of the relevant period for transposition when they resulted in the granting of development consent after that date.⁵¹ The time when the public participation took place was immaterial.

123. Furthermore, recognised organisations at least are not limited, in making a challenge, to relying on an infringement of the rules on public participation. Rather, they are able to rely in legal proceedings on the rules of national law implementing EU environmental law and the rules of EU environmental law having direct effect.⁵²

The possibility of separate actions in respect of procedural defects

124. In addition, the fact that under Article 11(2) of the EIA Directive Member States must determine at what stage the decisions, acts or omissions may be challenged pursuant to Article 11(1) also does not preclude consideration of defects in information pursuant to Article 6(2) in connection with the course of the period for bringing an action.

125. It is true that in some Member States certain procedural defects in the conduct of an environmental impact assessment cannot be challenged in the context of an action brought against the project consent, but only in separate judicial proceedings.⁵³

⁵⁰ Judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraphs 56 and 57).

⁵¹ Judgment of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 31).

⁵² Judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 48); of 15 October 2015, *Commission v Germany*, (C-137/14, EU:C:2015:683, paragraph 92); and of 8 November 2016, *Lesoochránárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 59).

⁵³ See my Opinion in *Križan and Others* (C-416/10, EU:C:2012:218, point 138 et seq.).

126. It is not evident, however, that there is provision for separate proceedings of this nature in Greece.

127. Above all, such a separate action could guarantee effective protection of the procedural rights claimed only if it prevents definitive and incontestable consent being granted to the project in the meantime.⁵⁴ The complaint relating to the infringement of procedural rights is not an end in itself, but must seek to procure an actual advantage to the applicant. Otherwise there would not be a sufficient interest in bringing proceedings.⁵⁵ In connection with the environmental impact assessment such an advantage presupposes that the action is able to influence the decision on the project.

128. For this reason, the competent national authorities (and courts⁵⁶) are under an obligation to take all measures necessary, within the sphere of their competence, to remedy the failure to carry out an environmental impact assessment, for example by revoking or suspending consent already granted in order to carry out such an assessment.⁵⁷ In this regard, it is possible to challenge not only a decision not to carry out an appropriate assessment of the implications for the site, but also, as the case may be, the assessment carried out inasmuch as it is alleged to be vitiated by defects.⁵⁸

129. The power recognised by Article 11(2) of the EIA Directive to determine the stage at which certain decisions may be challenged cannot therefore mean that a serious procedural defect in informing the public concerned pursuant to Article 6(2) has no relevance in assessing the course of the action against the consent.

The interests of the project developer

130. Lastly, the project developer's legitimate interest in legal certainty also does not preclude consideration of defects in providing information in respect of the course of the period. It is not at the mercy of defects in the information to public concerned by the authorities. If it doubts that announcements by the authorities are sufficient, it can additionally take appropriate measures of its own, such as notices at the site of the project and at other appropriate locations or notices in local newspapers. As a result of such measures, members of the public concerned would be able to receive actual knowledge of the project consent and would have a reasonable chance to inform themselves of the consent procedure.

(c) Interim conclusion

131. It must therefore be concluded that it is incompatible with Articles 9 and 11 of the EIA Directive to rely on a period for bringing an action which was set in motion by the announcement of the consent on the internet against members of the public concerned who did not have actual knowledge of the project consent, unless they were given a reasonable chance in accordance with Article 6(2) of the directive to learn in advance about the consent procedure.

⁵⁴ Judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 72), and my Opinion in *Križan and Others* (C-416/10, EU:C:2012:218, point 146).

⁵⁵ See judgments of 14 September 2010, *Akzo Nobel Chemicals and Akros Chemicals v Commission* (C-550/07 P, EU:C:2010:512, paragraph 23); of 22 June 2016, *DK Recycling und Roheisen v Commission* (C-540/14 P, EU:C:2016:469, paragraph 42); and of 9 November 2017, *HX v Council* (C-423/16 P, EU:C:2017:848, paragraph 30).

⁵⁶ Judgment of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraph 45).

⁵⁷ Judgments of 7 January 2004, *Wells* (C-201/02, EU:C:2004:12, paragraphs 64 and 65); of 3 July 2008, *Commission v Ireland* (C-215/06, EU:C:2008:380, paragraph 59); of 28 February 2012, *Inter-Environnement Wallonie and Terre wallonne* (C-41/11, EU:C:2012:103, paragraphs 42, 43 and 46); and of 26 July 2017, *Comune di Corridonia and Others* (C-196/16 and C-197/16, EU:C:2017:589, paragraph 35).

⁵⁸ Judgments of 7 November 2013, *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 37), and of 8 November 2016, *Lesoochranárske zoskupenie VLK* (C-243/15, EU:C:2016:838, paragraph 61).

V. Conclusion

132. I therefore propose that the Court should rule as follows:

- (1) Article 6(2) 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 requires information which gives the public affected by the project in question a reasonable chance at an early stage and in advance to learn about decision-making on proposed activities and how they can participate.
- (2) In establishing the arrangements for providing information pursuant to Article 6(3) of Directive 2011/92 the burden on members of the public concerned in connection with the exercise of the right of access must be proportionate to the effort required of the authorities.
- (3) The arrangements for consultation of the public concerned under Article 6(4) of Directive 2011/92 must ensure the proportionality of the burden on members of the public concerned in connection with participation in the procedure with the effort required of the authorities.
- (4) It is incompatible with Articles 9 and 11 of Directive 2011/92 to rely on a period for bringing an action which was set in motion by the announcement of the consent on the internet against members of the public concerned who did not have actual knowledge of the project consent unless they were given a reasonable chance in accordance with Article 6(2) of the directive to learn in advance about the consent procedure.