



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

3 October 2019*

(Reference for a preliminary ruling — Environment — Directive 91/676/EEC — Protection of waters against pollution caused by nitrates from agricultural sources — Objective of reducing pollution — Waters affected by pollution — Maximum nitrate level of 50 mg/l — Action programmes adopted by the Member States — Rights of individuals to have such a programme amended — *Locus standi* before the national authorities and courts)

In Case C-197/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), made by decision of 13 March 2018, received at the Court on 19 March 2018, in the proceedings brought by

Wasserleitungsverband Nördliches Burgenland,

Robert Prandl,

Gemeinde Zillingdorf,

intervener:

Bundesministerium für Nachhaltigkeit und Tourismus, formerly Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, C. Toader, A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: J. Kokott,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 6 February 2019,

after considering the observations submitted on behalf of:

- Wasserleitungsverband Nördliches Burgenland, Mr Prandl and Gemeinde Zillingdorf, by C. Onz, Rechtsanwalt, and H. Herlicska,
- the Austrian Government, by G. Hesse, C. Drexel, J. Schmoll and C. Vogl, acting as Agents,

* Language of the case: German.

- the Netherlands Government, by J.M. Hoogveld, M.K. Bulterman and M.A.M. de Ree, acting as Agents,
- the Polish Government, by B. Majczyna, D. Krawczyk and M. Malczewska, acting as Agents,
- the European Commission, by A.C. Becker and E. Manhaeve, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 28 March 2019,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 288 TFEU, Article 5(4) and (5) and Annex I A, point 2, to Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1).
- 2 The request has been made in proceedings brought by the Wasserleitungsverband Nördliches Burgenland (Water Association of North Burgenland, Austria; ‘the Water Association’), Mr Robert Prandl and Gemeinde Zillingdorf (Municipality of Zillingdorf, Austria) against the decision of the Bundesministerium für Nachhaltigkeit und Tourismus (Federal Ministry for Sustainability and Tourism, Austria; ‘the Ministry’), formerly Bundesministerium für Land- und Forstwirtschaft, Umwelt und Wasserwirtschaft (Federal Ministry for Agriculture, Forestry, the Environment and Water Management, Austria) of 30 May 2016, which rejected as inadmissible the requests to amend or revise the regulation Aktionsprogramm Nitrat 2012 (the 2012 Nitrate Action Programme Regulation).

Legal context

International law

- 3 Article 2 of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, done at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) (‘the Aarhus Convention’), entitled ‘Definitions’, provides, in paragraphs 4 and 5 thereof:

‘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 9(3) of the Aarhus Convention provides:

‘... each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.’

European Union law

- 5 The 1st, 3rd, 5th, 6th and 10th to 13th recitals of Directive 91/676 provide:

‘Whereas the nitrate content of water in some areas of Member States is increasing and is already high as compared with standards laid down in Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States [(OJ 1975 L 194, p. 26)], as amended by [Council] Directive 79/869/EEC [of 9 October 1979 (OJ 1979 L 271, p. 44)], and Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption [(OJ 1980 L 229, p. 11)], as amended by the 1985 Act of Accession;

...

Whereas the reform of the common agricultural policy set out in the Commission’s green paper “Perspectives for the common agricultural policy” indicated that, while the use of nitrogen-containing fertilisers and manures is necessary for Community agriculture, excessive use of fertilisers constitutes an environmental risk ...;

...

Whereas the main cause of pollution from diffuse sources affecting the Community’s waters i[s] nitrates from agricultural sources;

Whereas it is therefore necessary, in order to protect human health and living resources and aquatic ecosystems and to safeguard other legitimate uses of water, to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution; whereas for this purpose it is important to take measures concerning the storage and the application on land of all nitrogen compounds and concerning certain land management practices;

...

Whereas it is necessary for Member States to identify vulnerable zones and to establish and implement action programmes in order to reduce water pollution from nitrogen compounds in vulnerable zones;

Whereas such action programmes should include measures to limit the land-application of all nitrogen-containing fertilisers and in particular to set specific limits for the application of livestock manure;

Whereas it is necessary to monitor waters and to apply reference methods of measurement for nitrogen compounds to ensure that measures are effective;

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

- 6 Article 1 of Directive 91/676 provides:

‘This Directive has the objective of:

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

7 Article 2 of that directive is worded as follows:

‘For the purpose of this Directive:

- (a) “groundwater”: means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil;
- (b) “freshwater”: means naturally occurring water having a low concentration of salts, which is often acceptable as suitable for abstraction and treatment to produce drinking water;

...

- (i) “eutrophication”: means the enrichment of water by nitrogen compounds, causing an accelerated growth of algae and higher forms of plant life to produce an undesirable disturbance to the balance of organisms present in the water and to the quality of the water concerned;
- (j) “pollution”: means the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water;
- (k) “vulnerable zone”: means an area of land designated according to Article 3(2).’

8 Article 3 of that directive provides:

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

2. Member States shall, within a two-year period following the notification of this Directive, designate as vulnerable zones all known areas of land in their territories which drain into the waters identified according to paragraph 1 and which contribute to pollution. ...

...

4. Member States shall review [and] if necessary revise or add to the designation of vulnerable zones as appropriate, and at [e]ast every four years, to take into account changes and factors unforeseen at the time of the previous designation. ...

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

9 Under Article 4 of the directive:

‘1. With the aim of providing for all waters a general level of protection against pollution, Member States shall, within a two-year period following the notification of this Directive:

- (a) establish a code or codes of good agricultural practice ...
- (b) set up where necessary a programme, including the provision of training and information for farmers ...

...’

10 Article 5 of Directive 91/676 provides:

‘1. Within a two-year period following the initial designation referred to in Article 3(2) or within one year of each additional designation referred to in Article 3(4), Member States shall, for the purpose of realising the objectives specified in Article 1, establish action programmes in respect of designated vulnerable zones.

2. An action programme may relate to all vulnerable zones in the territory of a Member State or, where the Member State considers it appropriate, different programmes may be established for different vulnerable zones or parts of zones.

3. Action programmes shall take into account:

(a) available scientific and technical data, mainly with reference to respective nitrogen contributions originating from agricultural and other sources;

(b) environmental conditions in the relevant regions of the Member State concerned.

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

(a) the measures in Annex III;

(b) those measures which Member States have prescribed in the code(s) of good agricultural practice ...

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

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

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

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

11 Annex I to that directive is worded as follows:

‘A. Waters referred to in Article 3(1) shall be identified making use, inter alia, of the following criteria:

1. whether surface freshwaters, in particular those used or intended for the abstraction of drinking water, contain or could contain, if action pursuant to Article 5 is not taken, more than the concentration of nitrates laid down in accordance with Directive 75/440/EEC[, as amended by Directive 79/869];

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

3. whether natural freshwater lakes, other freshwater bodies, estuaries, coastal waters and marine waters are found to be eutrophic or in the near future may become eutrophic if action pursuant to Article 5 is not taken.
- B. In applying these criteria, Member States shall also take account of:
1. the physical and environmental characteristics of the waters and land;
 2. the current understanding of the behaviour of nitrogen compounds in the environment (water and soil);
 3. the current understanding of the impact of the action taken pursuant to Article 5.'
- 12 Annex III to Directive 91/676 contains a detailed list of measures to be included in action programmes as referred to Article 5(4)(a) of that directive. Under paragraph 1 of that annex:
- '1. The measures shall include rules relating to:
- ...
3. limitation of the land application of fertilisers, consistent with good agricultural practice and taking into account the characteristics of the vulnerable zone concerned ...
- ...
- and to be based on a balance between:
- (i) the foreseeable nitrogen requirements of the crops,
- and
- (ii) the nitrogen supply to the crops from the soil and from fertilisation corresponding to:
- the amount of nitrogen present in the soil at the moment when the crop starts to use it to a significant degree (outstanding amounts at the end of winter),
 - the supply of nitrogen through the net mineralisation of the reserves of organic nitrogen in the soil,
 - additions of nitrogen compounds from livestock manure,
 - additions of nitrogen compounds from chemical and other fertilisers.'

Austrian law

- 13 According to the order for reference, Article 5 of Directive 91/676 was transposed by Paragraph 55p of the Wasserrechtsgesetz 1959 (Law on water rights 1959). That provision authorises the Federal Minister to adopt, by means of a regulation, programmes with a view to gradually reducing and preventing further water pollution from the discharge, directly or indirectly, of nitrogen compounds from agricultural sources. Thus, the 2012 Nitrate Action Programme Regulation was adopted on the basis of Paragraph 55p of the Law on water rights 1959.
- 14 Paragraph 10(1) of that law governs the use of groundwater by landowners, who may use groundwater for domestic and commercial needs without requesting authorisation, provided that water is extracted only by hand-operated pumps or the intake is proportionate to the size of the individual's land.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 15 By their action before the Verwaltungsgericht Wien (Administrative Court, Vienna, Austria), the Water Association, Mr Prandl and the Municipality of Zillingdorf contest the Ministry's decision of 30 May 2016 that rejected as inadmissible their requests to have the 2012 Nitrate Action Programme Regulation amended.
- 16 The Water Association is a public law body legally required to carry out the task of public supply of water in a specifically defined territory, in the present case Burgenland (Austria). It is the fourth largest distributor in Austria, supplying approximately 160 000 people with water. In that territory, owners of land which has been built on are, in principle, under an obligation to connect to the water supply network. For the water to be used as drinking water, the nitrate levels must be below 50 mg/l. At certain measuring points, the nitrate levels in abstracted groundwater exceed that value by over 100%. That water is therefore treated prior to distribution in order to reduce the nitrate levels to below 50 mg/l.
- 17 Mr Prandl owns a domestic well. At the time the request to amend the 2012 Nitrate Action Programme Regulation was made, the nitrate level of the water from that well was 59 mg/l. It is true that in December 2017, the nitrate level did not exceed 50 mg/l. Nevertheless, it is common ground that the values vary, so that it is not inconceivable that nitrate levels exceed 50 mg/l.
- 18 The Municipality of Zillingdorf operates a municipal well with water that is deemed unfit for drinking due to high nitrate levels. At the time the requests to amend the 2012 Nitrate Action Programme Regulation were made, the nitrate level was 71 mg/l. That level has remained high throughout the course of the main proceedings.
- 19 The Ministry's decision to dismiss the request is based on a principle of Austrian law according to which a legal or natural person has *locus standi* in administrative or judicial proceedings only in so far as that person has individual substantive rights which he claims have been infringed. The Verwaltungsgericht Wien (Administrative Court, Vienna) notes that, in the dispute before it, the relevant provisions of Austrian administrative law, namely the Law on water rights 1959 and the Allgemeines Verwaltungsverfahrensgesetz (Law on general administrative procedure), do not confer any individual substantive rights on the applicants in the main proceedings.
- 20 In view of that obstacle under national law, the referring court wishes to know whether the applicants in the main proceedings can rely on EU law and, in particular, on Directive 91/676 in order to have the 2012 Nitrate Action Programme Regulation amended.
- 21 The referring court maintains that, in the judgments of 25 July 2008, *Janecek* (C-237/07, EU:C:2008:447), and of 19 November 2014, *ClientEarth* (C-404/13, EU:C:2014:2382), the Court acknowledged that, as regards air quality, certain persons can assert their rights with respect to the limit values where those persons are directly concerned, in particular due to a direct danger to their health. According to the referring court, it is not inconceivable that that case-law may also apply to matters concerning water quality.
- 22 The referring court notes that, in accordance with Article 5 of Directive 91/676, Member States are required to adopt action programmes such as the 2012 Nitrate Action Programme Regulation. Those programmes must include binding measures with a view to reducing water pollution and avoiding further pollution caused by nitrates from agricultural sources.
- 23 However, according to that court, there are several factors that prevent an individual from relying on that obligation before a national authority.

- 24 In the first place, it maintains that it is difficult to determine the precise extent of that obligation since it is not certain that the threshold of 50 mg/l, provided for in Annex I to Directive 91/676 as a means of identifying vulnerable zones within the meaning of Article 3 of that directive, is binding in that regard.
- 25 In the second place, Directive 91/676 confers discretion on the Member States as regards the choice of methods when drawing up action programmes in accordance with Article 5(4) of that directive and when adopting additional measures and reinforced actions as referred to in Article 5(5) thereof.
- 26 In the third place, there is no manifest threat to public health since other rules, in particular Council Directive 98/83/EC of 3 November 1998 on the quality of water intended for human consumption (OJ 1998 L 330, p. 32), ensure the quality of the water supplied to consumers.
- 27 In those circumstances, the Verwaltungsgericht Wien (Administrative Court, Vienna) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

‘Is Article 288 TFEU, in conjunction with Article 5(4) [of Directive 91/676] or with Article 5(5) of, in conjunction with Annex I A, point 2 to [that directive], to be interpreted as meaning that

- (a) a public water supplier, ... in so far as it is concerned by what are claimed to be inadequate action plans (as the value of 50 mg/l nitrate concentration in the water in this water supplier’s area is exceeded) and must for that reason take measures to treat the water

...

- (b) a consumer ... authorised by law to use the water from his own domestic well ... in so far as he is concerned by what are claimed to be inadequate action plans and the value of 50 mg/l nitrate concentration in the water of his water intake (domestic well) is exceeded, with the result that he is unable to exercise his legal right to make limited use of the groundwaters on his property

...

- (c) a municipality, which ... uses or makes available a communal well ... only for non-drinking water ..., in so far as [due to what are claimed to be inadequate action plans] the value of 50 mg/l nitrate concentration in the water at the source is exceeded and therefore a use as drinking water is not available,

[are directly concerned within the meaning of the case-law of the Court of Justice of the European Union, in this case possibly by failure to implement Directive 91/676 and are therefore granted subjective rights under that directive]

- to amendment of an action programme already adopted nationally to implement Directive [91/676] (pursuant to Article 5(4) of [that directive]) in such a way that stricter measures with the aim of attaining the objectives of Article 1 of [that directive] and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points are thus adopted?
- to the adoption of additional measures or reinforced actions (pursuant to Article 5(5) of Directive [91/676] with the aim of achieving the objectives laid down in Article 1(1) of [that directive] and specifically attaining a value of up to a maximum 50 mg/l nitrate concentration in the groundwaters at individual intake points?

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

Consideration of the question referred

- 28 By its question, the referring court asks, in essence, whether Article 288 TFEU and Article 5(4) and (5) of, and Annex I A, point 2 to, Directive 91/676 must be interpreted as meaning that natural and legal persons, such as the applicants in the main proceedings, who are responsible for ensuring the supply of water or who have the option of using a water well, should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions, provided for in Article 5(5) of that directive, in order to attain a maximum nitrate level of 50 mg/l at each intake point.
- 29 By that question, the referring court seeks to ascertain, in the first place, whether and under what conditions EU law confers *locus standi* on individuals in such proceedings before the national authorities and courts, in the second place, what the specific obligations deriving from Directive 91/676 are, and, in the third place, whether those obligations may be invoked by an individual directly against the competent national authorities.

Locus standi of individuals

- 30 According to settled case-law of the Court, it would be incompatible with the binding effect conferred by Article 288 TFEU on a directive to exclude, in principle, the possibility that the obligations which it imposes may be relied on by the persons concerned (judgments of 19 January 1982, *Becker*, 8/81, EU:C:1982:7, paragraph 22; of 7 September 2004, *Waddenvereniging and Vogelbeschermingsvereniging*, C-127/02, EU:C:2004:482, paragraph 66; and of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 34).
- 31 In particular, where the EU legislature has, by directive, imposed on Member States the obligation to pursue a particular course of action, the effectiveness of such action would be weakened if individuals were prevented from relying on it before their national courts, and if the latter were prevented from taking it into consideration as an element of EU law in deciding whether the national legislature, in exercising the choice open to it as to the form and methods for implementation, has kept within the limits of its discretion set out therein (judgments of 24 October 1996, *Kraaijeveld and Others*, C-72/95, EU:C:1996:404, paragraph 56, and of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraph 34).
- 32 It follows, as the Advocate General observed in point 41 of her Opinion, that at least the natural or legal persons directly concerned by an infringement of provisions of a directive must be in a position to require the competent authorities to observe such obligations, if necessary by pursuing their claims by judicial process.
- 33 In addition, ‘where they meet the criteria, if any, laid down in [the] national law, members of the public’ have the rights provided for in Article 9(3) of the Aarhus Convention. That provision, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law (see, to that effect, judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 45).

- 34 The right to bring proceedings set out in Article 9(3) of the Aarhus Convention would be deprived of all useful effect, and even of its very substance, if it had to be conceded that, by imposing those conditions, certain categories of ‘members of the public’, a fortiori ‘the public concerned’, such as environmental organisations that satisfy the requirements laid down in Article 2(5) of the Aarhus Convention, were to be denied of any right to bring proceedings (judgment of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987, paragraph 46).
- 35 In order to determine whether natural and legal persons such as the applicants in the main proceedings are directly concerned by an infringement of the obligations provided for in Directive 91/676, it is necessary to examine the purpose and the relevant provisions of that directive, the proper application of which is asserted before the referring court.
- 36 The purpose of Article 1 of Directive 91/676 is to reduce water pollution caused or induced by nitrates from agricultural sources and to prevent further such pollution. To that end, Article 5 of that directive provides that, in accordance with the conditions which it lays down, Member States are to establish action programmes and, if necessary, adopt additional measures or reinforced actions.
- 37 In accordance with Article 2(j) of that directive, ‘pollution’ is defined as the discharge, directly or indirectly, of nitrogen compounds from agricultural sources into the aquatic environment, the results of which are such as to cause hazards to human health, harm to living resources and to aquatic ecosystems, damage to amenities or interference with other legitimate uses of water.
- 38 That concept is given specific expression in Article 3(1) of Directive 91/676 and, in particular, in Annex I A, point 2 to that directive, according to which Member States must at least consider that groundwaters are polluted if they contain more than 50 mg/l nitrates or could be polluted if, in the absence of appropriate measures taken under Article 5 of that directive, those levels could be exceeded.
- 39 Therefore, it follows from Article 2(j) and Article 3(1) of Directive 91/676 that nitrate levels in groundwater that exceed or could exceed 50 mg/l must be considered to be such as to interfere with the legitimate use of water.
- 40 It follows from the above that a natural or legal person having the option of drawing and using groundwater is directly concerned by that threshold being exceeded or the risk of it being exceeded, which is capable of limiting that person’s option by interfering with the legitimate use of that water.
- 41 In view of the variety of uses referred to in Article 2(j) of Directive 91/676, the fact that values over that threshold do not, as such, involve a danger to the health of the persons wishing to bring an action is not capable of calling into question that conclusion.
- 42 As regards in particular the situation of the applicants in the main proceedings, it is apparent from the order for reference that, pursuant to Paragraph 10 of the Law on water rights 1959, they are entitled to operate groundwater wells at their disposal for domestic or commercial needs.
- 43 To the extent that the nitrate levels in the groundwaters in question exceed or could exceed 50 mg/l, the use of that water by the applicants in the main proceedings is interfered with.
- 44 According to the order for reference, exceeding that threshold is such as to prevent them from being able to make normal use of the water from their wells or, at the very least, to force them to incur costs for its decontamination.

- 45 Consequently, natural and legal persons such as those in the main proceedings are directly concerned by the failure to attain the main objective of Directive 91/676, laid down in Article 1 thereof, of reducing and preventing water pollution caused or induced by nitrates from agricultural sources as a result of the infringement of certain obligations of the Member States deriving from that directive.
- 46 It follows that natural and legal persons, such as the applicants in the main proceedings, must be in a position to require national authorities to observe those obligations, if necessary by bringing an action before the competent courts.

On the extent of the obligation to reduce and prevent pollution

- 47 As regards the obligations deriving from Directive 91/676, the referring court wishes to know, in particular, whether the maximum nitrate level of 50 mg/l in groundwater, provided for in Annex I A, point 2 to that directive, is a deciding factor for obliging the competent national authorities to amend the action programmes they have adopted pursuant to Article 5(1) to (4) of that directive or to adopt additional measures, in accordance with Article 5(5) of that directive.
- 48 In that regard, it must be recalled that, in accordance with the Court's settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part (judgment of 7 February 2018, *American Express*, C-304/16, EU:C:2018:66, paragraph 54 and the case-law cited).
- 49 As the Advocate General observed in point 55 of her Opinion, under Article 37 of the Charter of Fundamental Rights of the European Union, Article 3(3) TEU and Article 191(2) TFEU, EU policy on the environment aims at a high level of protection.
- 50 It follows from paragraphs 36 to 39 of the present judgment that, by attaining its objective of reducing water pollution caused or induced by nitrates from agricultural sources and preventing any further such pollution, Directive 91/676 seeks to allow individuals to make legitimate use of water, which means that the nitrate level must not exceed 50 mg/l.
- 51 As the Advocate General observed in points 72 and 73 of her Opinion, Directive 91/676 provides for specific instruments to combat water pollution by nitrates from agricultural sources. It applies where the discharge of nitrogen compounds of agricultural origin makes a significant contribution to the pollution (judgment of 29 April 1999, *Standley and Others*, C-293/97, EU:C:1999:215, paragraph 35). In that connection, it must be noted that the Court has previously held that such a contribution is significant where agriculture contributes, for instance, 17% of the total nitrogen in a specific basin (see, to that effect, judgment of 22 September 2005, *Commission v Belgium*, C-221/03, EU:C:2005:573, paragraph 86). If that condition for the application of Directive 91/676 is satisfied, it is for the Member States to determine, in accordance with Article 3(1) of that directive, the status of the waters within their territory.
- 52 Where, pursuant to that latter provision, read in conjunction with Annex I A to Directive 91/676, water must be considered as being affected or capable of being affected, Member States are required to adopt the measures provided for in Article 5 of that directive, namely action programmes and, if necessary, additional measures and reinforced actions (see, to that effect, judgment of 21 June 2018, *Commission v Germany*, C-543/16, not published, EU:C:2018:481, paragraph 60).
- 53 As regards action programmes, their implementation is inextricably linked to Article 3(1) of Directive 91/676, since, as long as the water is or could be polluted in the absence of appropriate action programmes adopted pursuant to Article 5(4) of that directive, Member States are obliged to adopt

such action programmes. The measures contained therein are, in any event, broadly determined by Directive 91/676 itself, as is apparent from Article 5(4) thereof, read in conjunction with Annex III thereto.

- 54 It is true that Member States have a certain latitude as regards the precise methods of implementing the requirements of Directive 91/676. However, they are, in all circumstances, obliged to ensure that the objectives of that directive, and consequently the objectives of European Union policy in the area of the environment, are achieved, in accordance with the requirements of Article 191(1) and (2) TFEU (judgment of 4 September 2014, *Commission v France*, C-237/12, EU:C:2014:2152, paragraph 30).
- 55 It follows from Article 5(5) of that directive that Member States are required to take, in the framework of the action programmes, such additional measures or reinforced actions as they consider necessary if, at the outset or in the light of experience gained in implementing the action programmes, it becomes apparent that the measures referred to in Article 5(4) will not be sufficient to attain the objectives laid down in Article 1 of that directive.
- 56 According to the case-law of the Court, it follows that the Member States must take such additional measures or reinforced actions at the point at which it first becomes clear they are necessary (see, to that effect, judgment of 21 June 2018, *Commission v Germany*, C-543/16, not published, EU:C:2018:481, paragraph 53 and the case-law cited).
- 57 In order to fulfil the aforementioned obligation in particular, Member States are required to monitor the water status closely. Thus, in accordance with the first subparagraph of Article 5(6) of Directive 91/676, they are required to draw up and implement monitoring programmes.
- 58 Under Article 5(3)(a) and (b) of Directive 91/676, action programmes are to take into account the best available scientific and technical data and the physical, geological and climatic conditions of each region (judgment of 4 September 2014, *Commission v France*, C-237/12, EU:C:2014:2152, paragraph 29). The same requirement also applies to monitoring programmes, as they must be adequate to assess the effectiveness of the action programmes. The 12th recital of that directive supports that assessment.
- 59 Furthermore, in view of the 13th recital of Directive 91/676, depending on the hydrogeological conditions and the resulting time for the measures already adopted under Article 5 of that directive to lead to an improvement in water quality, the values actually measured in the water and the trends that can be identified over time are relevant factors when determining the need for additional measures or reinforced actions.
- 60 The facts pointed to by the referring court, namely, the maximum nitrate level of 50 mg/l being exceeded at certain measuring points in the case of the first applicant in the main proceedings, the fluctuations in the quality of the water from the domestic well of the second applicant in the main proceedings, and the constant level of pollution of the water from the well of the third applicant in the main proceedings, are such relevant factors.
- 61 In addition, the Court has previously held that, in order to establish a need to adopt additional measures or to implement reinforced actions pursuant to Article 5(5) of Directive 91/676, there is no need to prove that the measures already adopted are ineffective (judgment of 21 June 2018, *Commission v Germany*, C-543/16, not published, EU:C:2018:481, paragraphs 63 and 64).
- 62 As the Advocate General observed in paragraph 105 of her Opinion, a surplus of nitrogen in the soil is also a relevant factor in order to establish the inadequacy of an action programme.

- 63 Such a surplus is contrary to Article 5(4)(a) of Directive 91/676, read in conjunction with Annex III, point 1(3) to that directive. Those provisions establish the principle of balanced fertilisation and require the foreseeable nitrogen needs of crops and the amount of nitrogen supplied to those crops from the soil and fertilisers to be brought into balance with one another. Therefore, they impose an obligation on the Member States to determine the amounts of nitrogen that can be applied by farmers in a precise manner (see, to that effect, judgment of 21 June 2018, *Commission v Germany*, C-543/16, not published, EU:C:2018:481, paragraphs 87, 88 and 92).
- 64 In the light of the foregoing considerations, it must be noted that, provided that nitrates of agricultural origin represent a significant contribution to pollution, as set out in paragraph 51 of the present judgment, Member States are required, in accordance with Articles 1, 3 and 5 of Directive 91/676, to have recourse to the measures referred to in Article 5(4) and (5) of that directive, where the nitrate levels in groundwater, in the absence of those measures, exceed or could exceed 50 mg/l.
- 65 In particular, if it appears, in the framework of the monitoring programmes referred to in paragraph 57 of the present judgment and having regard, in particular, to the evidence referred to in paragraphs 59 to 63 of the present judgment, that a reduction in water pollution is not to be expected, Member States must adopt additional measures or implement reinforced actions pursuant to Article 5(5) of Directive 91/676.
- 66 Furthermore, by its question, the referring court seeks to ascertain whether the maximum level of 50 mg/l of nitrates in groundwater must be observed at each measuring point.
- 67 In that regard, it must be noted that, in accordance with the second subparagraph of Article 5(6) of Directive 91/676, if a Member State has not designated specific vulnerable zones, but applies the provisions of Article 5 to its entire national territory, the nitrate levels in the waters are to be monitored at selected measuring points which make it possible to establish the extent of nitrate pollution in the waters from agricultural sources. It appears from the order for reference that the Republic of Austria has chosen that option.
- 68 It follows that exceeding 50 mg/l of nitrates in the waters or the risk of exceeding that level at one of the selected measuring points entails the obligation to implement the measures provided for in Article 5(4) and (5) of Directive 91/676. However, that directive does not oblige Member States to expand the monitoring measures beyond what is provided for in Article 5(6) of that directive.
- 69 To the extent that the values measured in a well or at another intake point, such as those of the applicants in the main proceedings, differ from the values obtained at the measuring points, it cannot be ruled out that the locations of those measuring points have been chosen, contrary to Article 5(6) of Directive 91/676, so that it is impossible to determine the extent of pollution in the territory they cover.

On the possibility of relying on the obligation to reduce and prevent pollution

- 70 The obligations provided for in Article 5(4) and (5) of Directive 91/676 are clear, precise and unconditional, which means that they can be invoked by individuals against the State (see, by analogy, judgment of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraph 42).
- 71 Admittedly, it is for the Member States to lay down, subject to the limits deriving from Annex III to Directive 91/676, the measures necessary to comply with those obligations. However, in accordance with Article 1 of that directive, those must be suitable for reducing water pollution caused or induced by nitrates from agricultural sources and preventing any further such pollution.

- 72 Therefore, although the Member States have discretion in that regard, the fact remains that the decisions taken by the competent authorities must be subject to judicial review, in particular in order to verify they have not exceeded the limits set for the exercise of those powers (see, to that effect, judgments of 24 October 1996, *Kraaijeveld and Others*, C-72/95, EU:C:1996:404, paragraph 59; of 25 July 2008, *Janecek*, C-237/07, EU:C:2008:447, paragraph 46; and of 26 June 2019, *Craeynest and Others*, C-723/17, EU:C:2019:533, paragraph 45).
- 73 In the light of all the foregoing considerations, the answer to the question referred is that Article 288 TFEU and Article 5(4) and (5) of, and Annex I A, point 2 to, Directive 91/676 must be interpreted as meaning that, provided that the discharge of nitrogen compounds of agricultural origin significantly contributes to the pollution of the groundwaters in question, natural and legal persons, such as the applicants in the main proceedings, should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions, provided for in Article 5(5) of that directive, as long as the nitrate levels in the groundwaters exceed or could exceed, in the absence of such measures, 50 mg/l at one or more measuring points within the meaning of Article 5(6) of that directive.

Costs

- 74 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

Article 288 TFEU and Article 5(4) and (5) of, and Annex I A, point 2 to, Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources must be interpreted as meaning that, provided that the discharge of nitrogen compounds of agricultural origin significantly contributes to the pollution of the groundwaters in question, natural and legal persons, such as the applicants in the main proceedings, should be in a position to require the competent national authorities to amend an existing action programme or adopt additional measures or reinforced actions, provided for in Article 5(5) of that directive, as long as the nitrate levels in the groundwaters exceed or could exceed, in the absence of such measures, 50 mg/l at one or more measuring points within the meaning of Article 5(6) of that directive.

[Signatures]