Reports of Cases

OPINION OF ADVOCATE GENERAL
WATHELET
delivered on 21 May 2015 [1]

**Case C-137/14**

**European Commission**
**v**

**Federal Republic of Germany**

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

## I –**Introduction**

1. By its application of 21 March 2014, the European Commission claims that the Court should declare that the Federal Republic of Germany has infringed Article 11 of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment [2] and Article 25 of Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control). [3]

2. In common with the cases which gave rise to the judgments in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289) and *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), the present case concerns access to justice and more precisely the scope of the right of access to a review procedure before a court of law or another independent and impartial body to challenge the legality of decisions, acts or omissions relating to public participation in decision-making in environmental matters.

## II – **Legal framework**

### A – *EU law*

3. Article 11 of Directive 2011/92 provides as follows:

‘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;

1 — Original language: French.
2 — OJ 2012 L 26, p. 1.
3 — OJ 2010 L 334, p. 17.

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

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

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

3. What constitutes a sufficient interest and impairment of a right shall be determined by the Member States, consistently with the objective of giving the public concerned wide access to justice. To that end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) shall be deemed sufficient for the purpose of point (a) of paragraph 1 of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of point (b) of paragraph 1 of this Article.

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

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

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

4. Article 24 of Directive 2010/75 is worded as follows:

'1. Member States shall ensure that the public concerned are given early and effective opportunities to participate in the following procedures:

(a) the granting of a permit for new installations;

(b) the granting of a permit for any substantial change;

(c) the granting or updating of a permit for an installation where the application of Article 15(4) is proposed;

(d) the updating of a permit or permit conditions for an installation in accordance with Article 21(5)(a).

…

2. When a decision on granting, reconsideration or updating of a permit has been taken, the competent authority shall make available to the public, including via the Internet in relation to points (a), (b) and (f), the following information:

(a) the content of the decision, including a copy of the permit and any subsequent updates;

(b) the reasons on which the decision is based;

(c) the results of the consultations held before the decision was taken and an explanation of how they were taken into account in that decision;

(d) the title of the BAT reference documents relevant to the installation or activity concerned;

(e) how the permit conditions referred to in Article 14, including the emission limit values, have been determined in relation to the best available techniques and emission levels associated with the best available techniques;

(f) where a derogation is granted in accordance with Article 15(4), the specific reasons for that derogation based on the criteria laid down in that paragraph and the conditions imposed.

3. The competent authority shall also make available to the public, including via the Internet at least in relation to point (a):

(a) relevant information on the measures taken by the operator upon definitive cessation of activities in accordance with Article 22;

(b) the results of emission monitoring as required under the permit conditions and held by the competent authority.

4. Paragraphs 1, 2 and 3 of this Article shall apply subject to the restrictions laid down in Article 4(1) and (2) of Directive 2003/4/EC.'

5. Article 25 of Directive 2010/75 provides:

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

(a) they have a sufficient interest;

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

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

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

To this end, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient for the purpose of paragraph 1(a).

Such organisations shall also be deemed to have rights capable of being impaired for the purpose of paragraph 1(b).

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

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

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

6. Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 reflect the requirements of Article 9(2) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters of 25 June 1998, 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'). [4]

7. The European Community signed the Aarhus Convention on 25 June 1998 and ratified it on 17 February 2005. Article 9(2) of the Aarhus Convention provides for access to judicial or other procedures for challenging the substantive or procedural legality of decisions, acts or omissions subject to the public participation provisions of Article 6 of the Convention.

8. In order to bring EU law into line with the Aarhus Convention, 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 [5] was adopted before the Convention was ratified by the Community. It amended, first, Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, [6] by inserting into it an Article 10a, and, secondly, Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, [7] by inserting into it an Article 15a, to ensure that they are compatible with Article 9(2) of the Aarhus Convention.

9. Article 6 of Directive 2003/35 provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 25 June 2005 at the latest.

10. Directive 85/337 was repealed, codified and replaced by Directive 2011/92. Directive 96/61 was repealed, codified and replaced by Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control, [8] which was subsequently repealed by Directive 2010/75. However, Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 have, in so far as their effects are concerned, the same content as Article 10a of Directive 85/337 and Article 15a of Directive 96/61. The time limit for transposing Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 remained 25 June 2005.

## B – *German law*

11. The relevant provisions of the Administrative Court Rules (Verwaltungsgerichtsordnung, 'the VwGO') are set out below.

4 — Article 9(2) of the Aarhus Convention provides:
'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. …
The provisions of this paragraph 2 shall not exclude the possibility of a preliminary review procedure before an administrative authority and shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law.'

5 — OJ 2003 L 156, p. 17.

6 — OJ 1985 L 175, p. 40.

7 — OJ 1996 L 257, p. 26.

8 — OJ 2008 L 24, p. 8.

12. Paragraph 42 of the VwGO provides:

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

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

13. Paragraph 113 of the VwGO states:

‘1. In so far as the administrative measure is unlawful and the applicant’s rights have thereby been impaired, the court shall annul the administrative measure together with any internal appeal decision where appropriate. …’

14. The provisions of the Law on Administrative Procedure (Verwaltungsverfahrensgesetz, ‘the VwVfG’) set out below are relevant in the present case.

15. Paragraph 44 of the VwVfG is worded as follows:

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

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

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

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

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

(4) which, for practical reasons, cannot be enforced;

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

(6) which is contrary to accepted principles of morality.

…’

16. Paragraph 46 of the VwVfG provides:

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

17. Paragraph 73 of the VwVfG provides:

‘1. The project manager must submit the plan to the authority responsible for the investigation with a view to implementation of the investigative procedure. ...

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

3. The municipalities referred to in subparagraph 2 shall submit the plan for consultation in the course of the three weeks following receipt and for a period of one month. The submission for consultation may be omitted where the class of persons concerned is known and they are given the opportunity to consult the plan in sufficient time.

...

4. Within two weeks of expiry of the deadline of the submission for consultation, any person whose interests are affected by the project may, in writing or by statement included in the record, raise objections to the plan before the municipality or authority responsible for the investigation. In the situation referred to in the second sentence of subparagraph 3, the authority responsible for the investigation shall determine the deadline for raising objections. Upon expiry of the deadline for raising objections, any objection not based on individual claims in private law shall be excluded. This shall be stated in the public notice of the submission for consultation or in the notification of the deadline for raising objections.

...’

18. The Law on actions in environmental matters (Umwelt-Rechtsbehelfsgesetz) of 7 December 2006, last amended by Paragraph 1 of the Law on supplementary provisions governing actions in environmental matters and other provisions of environmental law (Gesetz zur Änderung des Umwelt-Rechtsbehelfsgesetzes und anderer umweltrechtlicher Vorschriften) of 21 January 2013 (‘the UmwRG’), provides in the first sentence of Paragraph 1(1) thereof that it is to apply to actions which challenge decisions for the purposes of Paragraph 2(3) of the Law on environmental impact assessments (Gesetz über die Umweltverträglichkeitsprüfung, ‘the UVPG’), relating to the lawfulness of projects for which there may be, pursuant to the UVPG, an obligation to implement an environmental assessment.

19. The relevant provisions of that law are set out in the following points:

20. Paragraph 2 of the UmwRG provides as follows:

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

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

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

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

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

(1) it fulfils the conditions for recognition at the time of bringing the action,

(2) it has submitted a request for recognition,

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

...

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

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

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

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

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

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

21. Paragraph 4 of the UmwRG states:

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

an environmental impact assessment or

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

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

...

3. Subparagraphs (1) and (2) shall apply *mutatis mutandis* to actions by the parties provided for in Paragraph 61(1) and (2) of the [VwGO].'

22. Paragraph 5 of the UmwRG is worded as follows:

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

...

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

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

## III – **Pre-litigation procedure and procedure before the Court**

23. On 18 December 2006, the Commission received a complaint alleging the incorrect transposition, by Paragraph 2 of the UmwRG, of Article 10a of Directive 85/337, now Article 11 of Directive 2011/92, and of Article 15a of Directive 96/61, now Article 25 of Directive 2010/75.

24. Following that complaint, on 1 October 2012 the Commission sent a letter of formal notice to the Federal Republic of Germany relating to a failure to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. The Federal Republic of Germany responded to the letter of formal notice on 30 November 2012. On 26 April 2013, the Commission sent a reasoned opinion to the Federal Republic of Germany, to which the latter responded on 10 July 2013.

25. The Commission brought the present action on 21 March 2014.

26. By its application, the Commission requests that the Court declare that:

— by regarding the provisions of Directive 2011/92 and Directive 2010/75 as not, in principle, conferring any individual rights and thereby largely excluding reliance on them by individuals in legal proceedings (first sentence of Paragraph 113(1) of the VwGO);

— by limiting the annulment of decisions on the basis of procedural defects to cases in which the requisite environmental impact assessment or requisite preliminary assessment is entirely absent (Paragraph 4(1) of the UmwRG) and to cases in which the applicant establishes that there was a causal link between the procedural defect and the result of the decision (Paragraph 46 of the VwVfG) and that the applicant's legal position is affected;

— by limiting the standing to bring proceedings and the scope of judicial review to objections which have already been raised within the period prescribed in the course of the administrative procedure that led to the adoption of the decision (Paragraph 2(3) of the UmwRG and Paragraph 73(4) of the VwVfG);

— by limiting, in proceedings brought after 25 June 2005 and concluded before 12 May 2011, the standing of environmental organisations to bring proceedings to legal provisions that confer rights on individuals (Paragraph 2(1), read in conjunction with Paragraph 5(4) of the UmwRG);

— by restricting, in proceedings brought after 25 June 2005 and concluded before 12 May 2011, the scope of review by the courts of appeals by environmental organisations to legal provisions that confer rights on individuals (former Paragraph 2(1) of the UmwRG, read in conjunction with Paragraph 5(4) of the UmwRG); and

— by excluding generally from the scope of the UmwRG any administrative procedures initiated before 25 June 2005 (Paragraph 5(4) of the UmwRG),

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

27. The Federal Republic of Germany contends that the Court should dismiss the Commission's action and order the latter to pay the costs.

28. By order of the President of the Court of 13 August 2014, the Republic of Austria was granted leave to intervene in support of the Federal Republic of Germany. It asks the Court to dismiss the action and to order the Commission to pay the costs.

29. At the hearing of 12 March 2015, the Commission and the Federal Republic of Germany made their oral submissions.

## IV – **The action**

### A – *The first complaint, relating to the restriction of judicial review laid down by the first sentence of Paragraph 113(1) of the VwGO*

#### 1. Arguments of the parties

30. The Commission argues that, to the extent that the first sentence of Paragraph 113(1) of the VwGO confines the judicial review of decisions to provisions which confer rights on individuals, that provision is not compatible with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. It points out that, in paragraph 37 of the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289) and paragraph 48 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), the Court stated that the public concerned may, as a matter of principle, invoke any procedural defect. The Commission considers that the limitation at issue, like the other limitations referred to in the present action, is contrary to the objective of ensuring extensive judicial protection in accordance with Article 9(2) and (3) of the Aarhus Convention.

31. The Federal Republic of Germany considers that, in the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 45), the Court found that the national legislature was entitled to confine to individual public-law rights the rights whose infringement may be relied on by an individual in legal proceedings contesting a decision, act or omission covered by Article 11 of Directive 2011/92. The Federal Republic of Germany points out in that regard that, under Paragraph 42(2) of the VwGO, the admissibility of an

action for annulment or of an action for an injunction presupposes that the individual applicant asserts that 'his rights' have been impaired by the administrative measure at issue or by the refusal to adopt that measure and that the German legal order does not grant an individual the general right to claim that the law should be enforced.

32. The Federal Republic of Germany considers that the nature and scope of the review to be carried out by the national courts are not governed by Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. It also notes that the Court has not yet given a detailed ruling on those issues and considers that Member States have discretion in judicial matters. According to the Federal Republic of Germany, Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 do not contain any specific requirements with regard to the scope of the review of legal protection but require only the establishment of a review procedure to challenge the substantive or procedural legality of any decision, act or omission.

33. According to the Federal Republic of Germany, a legal provision such as Paragraph 113(1) of the VwGO, which makes the annulment of the approval decision subject to infringement of the applicant's individual public-law rights, avoids contradictions when assessing the admissibility of an action and its merits. It observes that where — as in the case of Paragraph 42(2) of the VwGO — the admissibility of an action depends on whether the applicant is able to assert the impairment of its own rights, this should be seen as the expression of a determination that, in the case of individual actions, only such impairments of rights can have the legal consequences sought by the applicant — namely the annulment of the approval.

34. The Republic of Austria considers that, under Article 11 of Directive 2011/92, Member States may make access to a review procedure before a court of law subject either to having a sufficient interest or to the obligation to maintain the impairment of a right, where administrative procedural law of a Member State requires this as a precondition. It notes that application of the criteria both of the necessary interest for a review procedure before a court of law and of the 'impairment of a right' falls within the scope of the States' domestic law. The Republic of Austria points out that Article 11 of Directive 2011/92 in no way states that a right of action must be granted to all members of the public concerned who may assert a legal interest. Member States have in the context of Article 11 of Directive 2011/92 a broad discretion, which also permits the right of action of individuals to be limited to individual public-law rights. [9]

## 2. Assessment

### a) Admissibility of the present complaint

35. By virtue of the first paragraph of Article 21 of the Statute of the Court of Justice of the European Union and Article 38(1)(c) of its Rules of Procedure, the Commission must, in any application made under Article 258 TFEU, indicate the specific complaints on which the Court is asked to rule and, at the very least in summary form, the legal and factual particulars on which those complaints are based. It follows that the Commission's action must contain a coherent and detailed statement of the reasons which have led it to conclude that the Member State in question has failed to fulfil one of its obligations under the treaties. [10]

9 — In the sense of rights conferred on individuals by public law provisions.

10 — Judgment in *Commission* v *Netherlands* (C-508/10, EU:C:2012:243, paragraphs 35 and 36 and the case-law cited).

36. It is clear both from the Commission's arguments and from its head of claim concerning the present complaint that this complaint relates specifically to the non-compliance of the first sentence of Paragraph 113(1) of the VwGO with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. Certainly, although the Commission's head of claim concerning this complaint is poorly drafted, the application unambiguously shows that the Commission is arguing, first, that, under the first sentence of Paragraph 113(1) of the VwGO, the judicial review of administrative measures is restricted in so far as the administrative courts may annul an unlawful measure only where it impairs the applicant's rights and, secondly, that that restriction infringes Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

37. Furthermore, both the defence of the Federal Republic of Germany and the statement in intervention of the Republic of Austria contain clear and specific observations on that legal question. Moreover, at the hearing, the Federal Republic of Germany emphasised that the restriction in question, laid down by the first sentence of Paragraph 113(1) of the VwGO, constituted one of the pillars of German administrative law and was not contrary to Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, which confirms that it fully understood the scope of the complaint.

38. The Court notes, however, that both the Commission and the Federal Republic of Germany have also submitted observations on Paragraph 4(1) and (3) of the UmwRG in the context of the present complaint.

39. It is clear from the observations of the Federal Republic of Germany that, pursuant to those provisions, the failure to carry out a requisite environmental impact assessment or a preliminary assessment of the requirement in the individual case for an environmental impact assessment is an infringement which leads directly to the annulment of the decision concerned, even in the case of actions brought by individuals. Those provisions therefore constitute a form of *lex specialis* in relation to the first sentence of Paragraph 113(1) of the VwGO and Paragraph 46 of the VwVfG, in that they require for the annulment of a measure in certain specific cases neither that an individual must establish that an individual right has been infringed nor that a causal link must exist between the procedural defect and the purport of the contested decision. They therefore relax the requirements of the first sentence of Paragraph 113(1) of the VwGO and Paragraph 46 of the VwVfG.

40. By contrast, the Commission claims in its application and in its oral argument at the hearing that, in Germany, the case-law does not apply or construe Paragraph 4(1) and (3) of the UmwRG in the same was as that submitted by the Federal Republic of Germany.

41. That said, the Commission's claim concerning the present complaint relates only to the first sentence of Paragraph 113(1) of the VwGO. I therefore consider that the present complaint concerns only the scope of the first sentence of Paragraph 113(1) of the VwGO and not Paragraph 4(1) and (3) of the UmwRG. Accordingly, in that it alleges that the Federal Republic of Germany has infringed Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, having regard to the case-law on Paragraph 4(1) and (3) of the UmwRG, the first complaint is inadmissible.

42. I shall therefore limit my conclusions on the first complaint to the first sentence of Paragraph 113(1) of the VwGO. By contrast, the second complaint will specifically focus on the compatibility of Paragraph 4(1) of the UmwRG with EU law.

b) Substance

i) Preliminary remarks

43. It should be pointed out that the present complaint concerns actions brought by natural and legal persons ('individuals') who are not non-governmental environmental organisations enjoying privileged access to justice in accordance with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. [11]

44. Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75 provide that the decisions, acts or omissions covered, respectively, by Directive 2011/92 on public participation or by Article 24 of Directive 2010/75 [12] must be subject to a review procedure before a court of law or another independent and impartial body established by law 'to challenge [their] substantive or procedural legality'.

45. There being no rules fixed in this sphere by EU law, it is for each Member State to lay down, in its legal system, the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, provided that those detailed rules are not, in accordance with the principle of equivalence, less favourable than those governing similar domestic actions and do not, in accordance with the principle of effectiveness, make it in practice impossible or excessively difficult to exercise rights conferred by EU law. [13]

46. It is important to add that the provisions of EU law at issue must be interpreted in the light of the objectives of the Aarhus Convention, which sought to involve in preserving, protecting and improving the quality of the environment and protecting human health members of the public concerned having a sufficient interest in bringing proceedings or maintaining the impairment of a right. [14]

47. It is clear that the objective of the provisions of EU law in question is to give the public concerned wide access to justice. This is its guiding principle and therefore constitutes an important source of interpretation. I consider, in accordance with the Opinion of Advocate General Sharpston in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, point 70), that 'the objective of providing "wide access" to justice gives the parameters within which Member States' legislative discretion may be exercised'.

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

12 — Entitled 'Access to information and public participation in the permit procedure'.

13 — See, judgments in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 43) and *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph [45]). It is not claimed by the Commission in the present action that the provision at issue does not respect the principle of equivalence. The present complaint therefore concerns the principle of effectiveness. I note that the two judgments cited concern Article 10a of Directive 85/337. However, I would point out that Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 have, as regards their effects, the same content as Article 10a of Directive 85/337. It follows that the case-law relating to that article is applicable *mutatis mutandis* to the provisions at issue in the present action. See point 10 of this Opinion.

14 — See judgments in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 41) and *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 45).

ii) The limitation of the admissibility of actions by individuals pursuant to Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75

48. Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75 clearly enable Member States to define and therefore to restrict the admissibility of actions by individuals,[15] provided that that limitation is consistent with the objective of giving the public concerned wide access to justice. To that end, those provisions allow Member States to choose between two criteria in order to limit the admissibility of actions brought by individuals.

49. In paragraph 38 of its judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), the Court held that 'with regard to the conditions for the admissibility of such actions, [those provisions provided] for two possibilities: the admissibility of an action may be conditional on "a sufficient interest in bringing the action" or on the applicant alleging "the impairment of a right", depending on which of those conditions is adopted in the national legislation'.[16] The conditions placed on the admissibility of actions by individuals provided for in Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 therefore prevent individuals from bringing *actio popularis* to challenge the legality of administrative decisions covered by the directives at issue.[17]

iii) Consideration of the substance of the action

50. I note that while Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75 provide that Member States may make the admissibility of actions subject to conditions, those provisions provide that the decisions, acts or omissions referred to must be open to judicial review to challenge their substantive or procedural legality.

51. Furthermore, it is settled case-law that Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75 have not in any way limited the pleas that could be put forward in support of such an action.[18]

iv) The criterion in German law requiring an infringement of an applicant's individual right, which forms the basis of a right to have an unlawful measure annulled

– Paragraph 42(2) of the VwGO and the first sentence of Paragraph 113(1) of the VwGO

52. It is common ground that, pursuant to Paragraph 42(2) of the VwGO and the first sentence of Paragraph 113(1) of the VwGO, German administrative law limits both the admissibility of actions brought by individuals and their right to have a measure annulled.

15 — Article 11(3) of Directive 2011/92 and Article 25(3) of Directive 2010/75 provide, by contrast, that the interest of certain non-governmental organisations in bringing an action is to be deemed sufficient. See footnote 11 of this Opinion.

16 — Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 confer on Member States significant discretion to determine what constitutes impairment of a right [see, to that effect, judgments in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 55) and *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 50)].

17 — See the Opinion of Advocate General Sharpston in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), in which she stated in point 42 that 'the actio popularis provision of the Aarhus Convention is Article 9(3), which has not yet been incorporated into EU law. … Consequently, there is, as yet, no EU law obligation on the Member States to permit an *actio popularis*'.

18 — See, judgments in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 37) and *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 36).

53. Indeed, Paragraph 42(2) of the VwGO makes the admissibility of actions brought by individuals subject to the condition that the applicant asserts that his rights have been impaired by the administrative measure at issue or by the refusal to adopt that measure. That limitation seems to me to be expressly covered by Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, since the Federal Republic of Germany has clearly opted for the second condition of admissibility to which Member States may make actions subject under those articles.

54. However, the first sentence of Paragraph 113(1) of the VwGO, which is the only provision covered by the present complaint,[19] is concerned with the merits of an action brought by an individual. Pursuant to that provision, the administrative courts may annul an unlawful administrative measure only in so far as it infringes an individual right of an applicant. The Federal Republic of Germany even argues that the review of the legality of the measure precedes the analysis of the impairment of the applicant's rights by any illegality found to exist. It adds that the annulment of the measure occurs only where that illegality impairs the applicant's rights.[20] At the hearing on 12 March 2015, the Federal Republic of Germany qualified its argument by explaining that, in some cases, the German courts adopt a pragmatic judicial approach and do not verify whether the administrative measure at issue is unlawful where individual rights are not impaired.

55. It follows that, pursuant to the first sentence of Paragraph 113(1) of the VwGO, the annulment of an administrative measure requires at the very least that the illegality found to exist by the court must 'coincide' with an infringement of an individual right of the applicant,[21] even where the applicant's action is admissible pursuant to Paragraph 42(2) of the VwGO.

– Infringement of Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75

56. It is clear from Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75 that the condition that the applicant must allege the 'impairment of a right' is concerned with the admissibility rather than with the substance of the action.

57. Indeed, it must be recalled that Article 11(1) of Directive 2011/92 and Article 25(1) of Directive 2010/75 have in no way limited the substantive pleas which may be relied on in support of an action brought under those provisions. However, the restriction of the right to annul a measure laid down by the first sentence of Paragraph 113(1) of the VwGO has the effect of limiting the substantive pleas that can be usefully relied on by individuals in support of their actions.

58. Indeed, by limiting the right of individuals to obtain the annulment of a measure to cases where that measure is the subject of a (preliminary or coincident) finding of illegality by the German administrative courts, the first sentence of Paragraph 113(1) of the VwGO created, in addition to the admissibility requirement, a further obstacle to access to justice, which is in no way provided for in Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 and significantly undermines the purpose and effectiveness of those two provisions, by reducing the scope and effectiveness of the judicial review.

19 — See points 38 to 41 of this Opinion.

20 — According to the Federal Republic of Germany, 'in accordance with first sentence of Paragraph 113(1) of the VwGO, the court is to annul the administrative measure together with any internal appeal decision where appropriate in so far as the administrative measure is unlawful *and the applicant's rights have thereby been impaired*. ... The provision governs the time when the court must annul the administrative measure in the context of the administrative procedure. Judicial review is then carried out in two stages. During the first stage, the court examines in detail whether the administrative measure is unlawful, that is to say, whether it is vitiated by any error of law. During the second stage, the court examines whether the "applicant's" rights have "thereby" been impaired, that is to say by the errors of law found to exist.' Emphasis added. See paragraph 40 of the defence of the Federal Republic of Germany.

21 — In *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), the referring court (the Bundesverwaltungsgericht, Germany) sought a ruling from the Court on the lawfulness in EU law of that requirement of 'coincidence' or 'parallelism'. The Court did not answer that question, considering that 'the national court ha[d] not itself provided any details of what constitutes that condition and that nothing in the grounds of the order for reference enable[d] the Court to determine whether examining that condition would be useful for resolving the dispute in the main proceedings' (see paragraph 55).

59. I note in that regard that, at the hearing on 12 March 2015, following a question from the Court on the effectiveness for an individual of the mere finding that a measure is unlawful, the Federal Republic of Germany acknowledged that, although the German authorities could revoke the unlawful act, they were not required to do so.

60. Even though every illegality [22] — however minimal — should not necessarily lead to the annulment of a measure, the mere finding that a measure is unlawful by the German administrative courts does not have the same legal effect as the annulment of that measure.

61. Furthermore, limiting the right of individuals to obtain the annulment of a measure declared unlawful makes it more difficult to protect the environment, since it is clear from recital 27 of Directive 2010/75 that Members of the public concerned should 'have access to justice in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being'. [23]

62. I therefore consider that the first complaint is well founded.

63. It follows that the Federal Republic of Germany, by limiting, pursuant to the first sentence of Paragraph 113(1) of the VwGO, the right of individuals to obtain the annulment of a measure to cases where that measure is or has been found to be unlawful by the German administrative courts, has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

B – *The second complaint, relating to the existence of a right to obtain the annulment of a measure only in cases where no environmental impact assessment has been carried out, to the restriction of that right where the environmental impact assessment has been carried out but was irregular (Paragraph 4(1) of the UmwRG) and to the requirement both that there be a causal link between the procedural defect and the result of the decision and that the applicant's substantive legal position be affected (Paragraph 46 of the VwVfG and the first sentence of Paragraph 113(1) of the VwGO)*

64. The present complaint is therefore divided into two parts. The first concerns the compatibility of Paragraph 4(1) of the UmwRG with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 and the second concerns the compatibility of Paragraph 46 of the VwVfG and the first sentence of Paragraph 113(1) of the VwGO with the same articles.

22 — As regards the procedure or substance.

23 — I concur, in that regard, with the Opinion of Advocate General Cruz Villalón in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:422, points 92 to 101), in which he considers that, in the context of the merits, the actual requirement for an individual to assert an individual right is not consistent with the principle of effectiveness and does not transpose the provisions of EU law at issue.

1. First part — The existence of a right to obtain the annulment of a measure only in cases where no environmental impact assessment has been carried out and the restriction of that right where the environmental impact assessment has been carried out but was irregular (Paragraph 4(1) of the UmwRG)

a) Arguments of the parties

65. The Commission argues that, under Paragraph 4(1) of the UmwRG, an approval decision may be annulled without the additional requirements laid down by the first sentence of Paragraph 113(1) of the VwGO only in the absence of an environmental impact assessment. However, if such an assessment has taken place but it does not fulfil the requirements of Directive 2011/92, it cannot be challenged under that national provision. The Commission considers that Paragraph 4(1) of the UmwRG is therefore incompatible with Article 11 of Directive 2011/92.

66. According to the Commission, it is clear from the case-law of the Court that a provision transposing a directive must be sufficiently precise and clear, in particular where it creates rights for individuals, to ensure that the persons concerned are put in a position to know the full extent of their rights and, where appropriate, to be able to rely on them before the national courts.[24] The Commission argues that this is not the case in Germany and that the Federal Republic of Germany must take appropriate measures to this end, in accordance with the duty of sincere cooperation.

67. The Federal Republic of Germany notes that Paragraph 4(1) and (3) of the UmwRG governs only cases where no environmental impact assessment or preliminary assessment of the requirement for an environmental impact assessment has been carried out and cases where a preliminary assessment of the requirement for an environmental impact assessment does not comply with the requirements of the fourth sentence of Paragraph 3a of the UVPG.

68. According to the Federal Republic of Germany, in the case of all other procedural defects, including irregularities in carrying out environmental impact assessments, the first sentence of Paragraph 113(1) of the VwGO permits an action before the courts and a right to have the administrative measure annulled. It adds that the right to have the measure annulled is removed only in exceptional cases, where the conditions of Paragraph 46 of the VwVfG are fulfilled.

b) Assessment

69. Although the summary of the first part of this complaint, as reflected in the form of order sought in the application, actually covers both provisions of EU law, it must nevertheless be stated that the arguments in that part of the complaint relate only to Article 11 of Directive 2011/92. Furthermore, Paragraph 4(1) of the UmwRG covers only the failure to carry out an environmental impact assessment or a preliminary assessment of the requirement in the individual case for an environmental impact assessment, which is the subject matter of Directive 2011/92. I would also add that the Commission itself, questioned on that point at the hearing, was unable to explain the relevance of Article 25 of Directive 2010/75 to the first part of this complaint. In those circumstances, I consider that this complaint must be understood as being limited to Article 11 of Directive 2011/92 alone.

70. This first part of the second complaint concerns the manner in which Article 11 of Directive 2011/92 has been transposed into German law. It relates to the fact that Paragraph 4(1) of the UmwRG is limited to cases in which no environmental impact assessment or preliminary assessment of the requirement for an environmental impact assessment has been carried out.

24 — Judgment in *Commission* v *United Kingdom* (C-530/11, EU:C:2014:67, paragraph 34 and the case-law cited).

71. In its presentation of national law, the Federal Republic stated that '[the UmwRG] contains provisions *concerning the transposition* of Article 11 of Directive [2011/92] and Article 25 of Directive [2010/75]'. [25] It also notes that 'Paragraph 4 of the UmwRG governs the legal consequence of omitting a requisite environmental impact assessment (EIA) or a preliminary assessment of the requirement in the individual case for an environmental impact assessment. In accordance with Paragraph 4(1) and (3), such a procedural defect leads to the annulment of the decision. The law does not contain provisions concerning other procedural defects, for example the fact that an environmental impact assessment has been carried out incorrectly; those procedural defects must be assessed in accordance with Paragraph 46 of the [VwVfG]'. [26]

72. By its second question in the case which gave rise to the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 38), the Bundesverwaltungsgericht (Germany) asked the Court whether Article 10a of Directive 85/337, which has the same content as Article 11 of Directive 2011/92, [27] precluded 'the Member States from limiting the applicability of the provisions transposing that article solely to cases in which the legality of a decision is challenged on the ground that no environmental impact assessment was carried out, while not extending that applicability to cases in which such an assessment was carried out but was irregular'.

73. It is clear from point 63 of the Opinion of Advocate General Cruz Villalón in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:422) that the Federal Republic of Germany had argued 'that German law already fulfil[led] those requirements inasmuch as Paragraph 4(1) of the UmwRG in conjunction with Paragraph 46 of the VwVfG provide[d] that an application for the annulment of an approval decision [could] also be made where an EIA has been carried out incorrectly'.

74. However, in paragraph 37 of its judgment in that case, the Court ruled that '[t]he provisions of national law transposing [Article 10a of Directive 85/337] may not limit their applicability solely to cases in which the legality of a decision is challenged on the ground that no environmental impact assessment has been carried out. Excluding that applicability in cases in which, having been carried out, an environmental impact assessment is found to be vitiated by defects — even serious defects — would render largely nugatory the provisions of Directive 85/337 relating to public participation. Such exclusion would therefore run counter to the objective of ensuring wide access to courts of law as mentioned in Article 10a of that directive'.

75. It is therefore clear from the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 32) that, according to the Court, German law neither remedied nor mitigated the insufficiencies of Paragraph 4(1) of the UmwRG in transposing Article 10a of Directive 85/337 (and therefore Article 11 of Directive 2011/92).

76. Seeing no reason to call into question that case-law, I consider that the first part of the second complaint is well founded. [28]

77. It follows that the Federal Republic of Germany, by limiting, in so far as concerns the annulment of decisions on the basis of procedural defects, the scope of Paragraph 4(1) of the UmwRG to cases in which the requisite environmental impact assessment or requisite preliminary assessment is entirely absent, has failed to fulfil its obligations under Article 11 of Directive 2011/92.

25 — Emphasis added. See paragraph 6 of the defence.

26 — See paragraph 8 of the defence.

27 — See point 10 of this Opinion.

28 — That first part of the second complaint is logically connected to the first complaint. Paragraph 4(1) of the UmwRG cannot correctly transpose Article 10a of Directive 85/337 (and thus Article 11 of Directive 2011/92), since it does not apply in the case of irregular environmental impact assessments, the latter being, however, covered by the first sentence of Paragraph 113(1) of the VwGO, which formed the subject matter of the first complaint, which I proposed that the Court should uphold.

2. The second part: the requirement that there be a causal link and that a substantive legal position be affected

a) Arguments of the parties

78. The Commission argues that, according to settled case-law in Germany on the application of Paragraph 46 of the VwVfG, a challenge brought by an individual against a procedural defect concerning a decision relating to an environmental impact assessment may result in the annulment of that decision only if there is a real possibility that the decision would have been different without that defect ('the causation requirement').

79. Furthermore, the Commission argues that it is generally for the applicant to establish any causal link.

80. The Commission states that, as regards the application of Directive 2011/92, the outcome of the decision-making procedure is not the most important aspect. It considers that Directive 2011/92 must, in essence, ensure that all the direct and indirect effects of a project likely to have a significant impact on the environment are examined, that the public is informed about the planned project and that the public has the opportunity to take part in the decision-making procedure. Monitoring compliance with the procedural rules in that area is therefore of particular importance. National law should therefore provide for the annulment of the decision in the event of a serious error in applying the procedural requirements without the applicant having to establish that there is a causal link with the outcome of the decision. As regards Directive 2011/92, at the very least infringements of the rights to information and to public participation should be regarded as serious procedural defects.

81. According to the Commission, it is clear from the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 52) that, in Germany, neither the method of sharing the burden of proof nor the judicial review fulfils the criteria of Directive 2011/92. It also notes that the Aarhus Convention Compliance Committee shares that view with regard to the corresponding provisions of that Convention. [29]

82. The Commission also argues that, according to settled case-law in Germany, under the first part of Paragraph 113(1) of the VwGO, a procedural defect concerning a decision relating to an environmental impact assessment can result in the annulment of that decision only if the procedural defect impairs an individual right of the applicant. It takes the view that that requirement infringes Article 11 of Directive 2011/92. The Commission considers that, provided that an action is admissible, a court cannot disregard procedural defects, even if they do not impair an individual right of an applicant.

83. The Federal Republic of Germany claims, on the contrary, that Paragraph 46 of the VwVfG is compatible with Article 11 of Directive 2011/92. The requirement of a causal link does not, in principle, affect the attainment of the objectives of the latter provision. Furthermore, Paragraph 46 of the VwVfG is applicable only in the case of an infringement of procedural rules which is not covered by Paragraph 4(1) and (3) of the UmwRG.

84. It also notes that Paragraph 46 of the VwVfG is structured as a defensive rule which allows the authority to defend itself against the right to have an administrative measure annulled. As a defensive rule, Paragraph 46 of the VwVfG is examined by the court in the context of the merits of the action.

29 — In paragraph 83 of its report of 20 December 2013, the Compliance Committee makes the following point in that regard: 'therefore, it is not be compatible with the Convention to allow the public to challenge, in theory, the procedural legality of decisions subject to Article 6 of the Convention, where, in practice, those actions are routinely dismissed as inadmissible or unfounded by the courts, on the ground that the claimed procedural defects are not material to the decision (that is to say that the decision would not have been different if there had been no defect)'.

85. The Federal Republic of Germany maintains that, in accordance with Paragraph 46 of the VwVfG, where an environmental impact assessment is carried out incorrectly it may still be relied on and always results in a right on the part of the applicant to have the decision annulled, in so far as the procedural defect is not manifestly irrelevant to the result of the decision. It considers, as the Court held in the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 49), that a prudent restriction of the scope of the examination in the case of procedural defects does not jeopardise the attainment of the objectives of the directive concerning the environmental impact assessment where the restriction concerns defects which do not necessarily have consequences of such a kind as to affect the decision.

86. The Federal Republic of Germany considers, finally, that the assumption that it is for the applicant to provide evidence that a right of his has been impaired is, for its part, not relevant in the light of the law as it now stands.

87. It states, however, that, in the context of the review of the UmwRG, it is envisaged that a provision clarifying the transposition of Article 11 of Directive 2011/92 will be adopted.

b) Assessment

88. It should be noted at the outset that the Commission's argument concerns the application of the first sentence of Paragraph 113(1) of the VwGO and Paragraph 46 of the VwVfG to procedural defects.

89. It is common ground that Paragraph 4(1) of the UmwRG covers only cases where there has been a failure to carry out an environmental impact assessment or a preliminary assessment of the requirement in the individual case for an environmental impact assessment and does not cover cases where they have been carried out incorrectly or irregularly. In the latter cases, the contested decision may be annulled only if the procedural defect fulfils both the condition that it impairs an individual right of the applicant, pursuant to the first sentence of Paragraph 113(1) of the VwGO, and the conditions laid down by Paragraph 46 of the VwVfG.

90. In accordance with my conclusions concerning the first complaint, I consider that, with regard to cases where an environmental impact assessment or a preliminary assessment of the requirement in the individual case for an environmental impact assessment has been carried out incorrectly, the restrictions on the right to have the contested decision annulled laid down by the first sentence of Paragraph 113(1) of the VwGO infringe Article 11 of Directive 2011/92.

91. Concerning Paragraph 46 of the VwVfG, which deals with procedural defects, it is clear from the observations of the Federal Republic of Germany and from the actual wording of that provision that it imposes a criterion that there must be a causal link between the procedural defect invoked and the content of the final contested decision ('the condition of causality').[30]

92. In paragraphs 47 and 48 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), the Court ruled that 'it was not the intention of the [EU] legislature to make the possibility of invoking a procedural defect conditional upon that defect's having an effect on the purport of the contested final decision. … Moreover, given that one of the objectives of that directive is, in particular, to put in place procedural guarantees to ensure the public is better informed of, and more able to participate in, environmental impact assessments relating to public and private projects likely to have a significant effect on the environment, it is particularly important to ascertain whether the procedural rules

30 — It follows from the wording of Paragraph 46 of the VwVfG that that provision covers only 'relative' procedural defects, namely those which vitiate a measure which is 'not null and void' under Paragraph 44 of the VwVfG ('absolute' defects).

governing that area have been complied with. Therefore, as a matter of principle, in accordance with the aim of giving the public concerned wide access to justice, that public must be able to invoke any procedural defect in support of an action challenging the legality of decisions covered by that directive'.

93. It follows that the requirement of a causal link is, in principle, precluded pursuant to Article 11 of Directive 2011/92.

94. However, the Court qualified that assessment in paragraph 49 of the same judgment, in holding that not every procedural defect necessarily affects the purport of the contested final decision and, therefore, does not necessarily impair a right. In those circumstances, the law of a Member State may provide that the action is inadmissible.

95. In my view, that qualification must apply not only to the admissibility of an action but likewise to its merits, provided however that the procedural defect in question is minimal and, therefore, that it does 'not have an adverse effect on ensuring that the public is better informed of, and more able to participate in, environmental impact assessments relating to public and private project'.

96. As the right of the public to be better informed and to participate is, clearly, one of the cornerstones of Directive 2011/92 [31] and the very raison d'être of Article 11 thereof, I concur with the Opinion of Advocate General Cruz Villalón in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:422, point 106), in which he considers that 'this means that, in the case of particularly important procedural provisions, the requirement of a causal link for the purposes of the outcome of the administrative procedure must be dispensed with entirely'.

97. The fact remains that, with the exception of the defects provided for in Paragraph 44 of the VwVfG [32] and Paragraph 4(1) of the UmwRG, German law, pursuant to Paragraph 46 of the VwVfG, requires in all cases, that is to say even in the case of procedural defects relating to public information and participation, the existence a causal link between the defect invoked and the purport of the contested final decision as the basis for the annulment of that decision.

98. In my view, irrespective of the issue of the burden of proof in that regard, that requirement under Paragraph 46 of the VwVfG makes it excessively difficult for individuals to exercise their rights of action and of access to justice and thereby infringes Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

99. In any event, as regards the issue of the burden of proof, the Court ruled in paragraph 52 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712) that, in Germany, 'it appears, however, … that it is in general incumbent on the applicant, in order to establish impairment of a right, to prove that the circumstances of the case make it conceivable that the contested decision would have been different without the procedural defect invoked. That shifting of the burden of proof onto the person bringing the action, for the application of the condition of causality, is capable of making the exercise of the rights conferred on that person by Directive 85/337 excessively difficult, especially having regard to the complexity of the procedures in question and the technical nature of environmental impact assessments'.

100. I note that the Federal Republic of Germany also intends to adopt a clarifying provision concerning the burden of proof relating to the condition of causality. [33]

31 — And Directive 2010/75.

32 — It is clear from its wording that Paragraph 44 of the VwVfG covers only 'particularly serious' defects. Furthermore, the defects referred to in Paragraph 44(2) of the VwVfG are not really defects relating to public information and participation in the context of environmental impact assessments concerning public or private projects.

33 — See paragraph 69 of the defence.

101. It follows that, by requiring, pursuant to Paragraph 46 of the VwVfG, the existence of a causal link between, first, the procedural defects relating to public information and participation and, secondly, the purport of the contested final decision in order to justify the annulment of that decision, the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

*C – The third complaint, relating to the prohibition on raising objections (Paragraph 2(3) of the UmwRG and Paragraph 73(4) of the VwVfG)*

1. Arguments of the parties

102. The Commission considers that the limitation to objections raised during the administrative procedure of the right to bring an action as referred to in Paragraph 2(3) of the UmwRG, Paragraph 73(4) of the VwVfG and in the German case-law is contrary to Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. It notes that those exclusion rules overly complicate the right of the public concerned to challenge the legality of decisions, obstruct the wide access to justice required by Directives 2011/92 and 2010/75 as well and by the Aarhus Convention and limit the effective judicial protection of the public concerned.

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

104. The Commission does not concur with the view of the Federal Republic of Germany that the German rules on the exclusion of certain objections are necessary for reasons of legal certainty and procedural effectiveness. In the Commission's view, the time limits for challenging decisions of administrative authorities before the courts are sufficient to ensure legal certainty and the effectiveness of proceedings.

105. The Federal Republic of Germany considers that Paragraph 2(3) of the UmwRG and Paragraph 73(4) of the VwVfG are compatible with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

106. The Federal Republic of Germany argues that such prohibitions on the raising of objections form an integral part of the national legal system. It considers that Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 allow Member States to retain the instruments of their judicial systems in the relevant field.

107. According to the Federal Republic of Germany, the time limit is based on the idea of a limitation period and its function is primarily to ensure that conflicting interests relating to a project are, in so far as possible, reconciled at an early stage of the administrative procedure. Therefore, the rules on time limits are of particular importance in the context of multipolar legal relationships involving the project leader's protected legal sphere, on the one hand, and those of any third parties affected by that project, on the other hand.

108. The Federal Republic of Germany considers that the time limit does not make that review more difficult, or even impossible, but rather ensures that the facts presented for review by the court are made as clear as possible, include all the relevant elements and are examined in detail. It notes that only facts which the applicant has wrongly failed to rely on in the context of the administrative procedure are affected by the time limit.

109. The Republic of Austria is of the view that the establishment of specific rules limiting the right of action forms part of the organisation of national proceedings. In all cases, therefore, it falls within the scope of application of the principle of the procedural autonomy of Member States.

110. According to the Republic of Austria, it is a fundamental principle of Austrian and German administrative law and their respective environmental impact assessment procedures that persons may exercise their rights in an administrative procedure only in so far as they participate in that procedure.

111. The Republic of Austria notes that the exclusion rule is an important means of ensuring that the administrative procedure is expeditious and effective. It considers that, it would otherwise be possible to delay at will the decision to be taken in a procedure, through the raising of further objections on completely new topics or by persons who have not until then been involved in the procedure. This would run entirely counter to the principle of legal certainty in general and to the project promoter's legal interest in obtaining a decision within a reasonable period in particular.

2. Assessment

112. It is true that the Member States, by virtue of their procedural autonomy and subject to observance of the principles of equivalence and effectiveness, enjoy discretion in implementing Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. [34]

113. However, it must be recalled that, according to those articles, the decisions, acts or omissions covered, respectively, by Directive 2011/92 on public participation or by Article 24 of Directive 2010/75 must be subject to a review procedure before a court of law or another independent and impartial body established by law to challenge their substantive or procedural legality, with no restriction whatsoever on the pleas which may be relied on in support of such a review. [35]

114. However, Paragraph 2(3) of the UmwRG and Paragraph 73(4) of the VwVfG clearly limit the pleas which may be relied on by an applicant in support of legal proceedings.

115. Although Article 11(4) of Directive 2011/92 and Article 25(4) of Directive 2010/75 are not to exclude the possibility of a preliminary review procedure before an administrative authority and are not to affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures, where such a requirement exists under national law, those provisions by no means allow restrictions to be placed on the pleas which may be relied on by an applicant in support of a subsequent judicial review.

116. The fact remains that, according to the Commission's observations, legal proceedings are separate and distinct from the administrative procedure and administrative appeals.

117. Therefore, I consider that the national rules at issue create a further obstacle to access to justice which is not provided for in Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

118. In my view, that further obstacle cannot be justified on grounds of legal certainty, since the time limits for challenging decisions of administrative authorities before the courts are sufficient in that context.

34 — See, to that effect, judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraph 30).

35 — See point 44 of this Opinion.

119. As regards the argument concerning the effectiveness of administrative procedures, although it is true that the possibility of raising 'objections' for the first time during legal proceedings may be 'problematic', it is sufficient to recall that the actual objective pursued by Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 is to ensure wide access to courts of law. The EU legislature has clearly given more weight to that objective than to the effectiveness of administrative procedures, with a view to contributing to preserving, protecting and improving the quality of the environment and human health. [36]

120. It follows that the Federal Republic of Germany, by limiting, in Paragraphs 2(3) of the UmwRG and 73(4) of the VwVfG, the standing to bring proceedings and the scope of judicial review to objections which have already been raised within the period prescribed by the administrative procedure that led to the adoption of the decision, has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

D – *The fourth and fifth complaints, relating to the temporal limitations on the application of Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75*

1. Arguments of the parties

a) The fourth complaint

121. The Commission recalls that the initial version of Paragraph 2(1) of the UmwRG was not compatible with Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75, since, inter alia, under that version the standing of environmental organisations to bring proceedings was limited to legal provisions conferring rights on individuals. It notes that, on 8 November 2012, following the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289), the Bundestag passed an amendment to the UmwRG, which entered into force on 29 January 2013 and removed the words 'confer rights on individuals' from Paragraph 2(1) of the UmwRG, in order to remedy the illegality that existed until then.

122. However, the Commission considers that the new version of the UmwRG has only restricted temporal validity, because Paragraph 5(4) of the UmwRG, as amended, provides that only procedures which were still pending on 12 May 2011 [the date of the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289)] or were initiated after that date and have not been closed and resulted in an enforceable decision by 29 January 2013 (the date of entry into force of the amended version of the UmwRG) must be completed in accordance with the new version of the UmwRG.

123. According to the Commission, in proceedings brought after 25 June 2005 and closed before 12 May 2011, the standing of environmental organisations to bring proceedings is therefore still limited to those provisions which confer rights on individuals. It considers that, given the parallelism in German administrative law between the admissibility of an action and the scope of the judicial review when examining the merits, that temporal limitation also affects the scope of the judicial review.

36 — See, by analogy, judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712, paragraphs 27 to 29).

124. In the Commission's view, the transitional provision in Paragraph 5(4) of the UmwRG prolongs in the case of actions by environmental organisations a legal situation which is contrary to EU law, in that for the actions in question it continues largely to preclude the review of procedural rules. Accordingly, it considers that, *ratione temporis*, having regard to the procedures excluded under the transitional provision in Paragraph 5(1) and (4) and Paragraph 2(5) of the UmwRG, that provision infringes Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

125. The Federal Republic of Germany maintains that Paragraph 5(4) of the UmwRG is purely declaratory and has no regulatory effect. Its purpose is solely to facilitate implementation of the UmwRG by the body responsible for implementing it. In accordance with Paragraph 5(4) of the UmwRG, appeal procedures which have not yet been closed and resulted in an enforceable decision must be completed in accordance with the new provisions of the UmwRG in force as of 29 January 2013. Conversely, the legislative amendment has no impact on appeal procedures which were closed and resulted in an enforceable decision before the adoption of the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289). It considers that, in accordance with the case-law of the Court,[37] those procedures should not be reviewed.

b) The fifth complaint

126. The Commission argues that the exclusion, in the first part of Paragraph 5(1) and Paragraph 5(4) of the UmwRG, of administrative procedures that were initiated prior to 25 June 2005 infringes Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75. It notes that the existence of that infringement is confirmed by the Court in paragraph 30 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712). It also considers that the second part of Paragraph 5(1) of the UmwRG, which excludes from the scope of the UmwRG decisions which became enforceable before 15 December 2006 (the date of entry into force of the UmwRG), infringes Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

127. The Federal Republic of Germany states that it is preparing an amendment of the UmwRG which will transpose paragraph 31 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), in which the Court held that, in accordance with Article 11 of Directive 2011/92, procedures initiated before 25 June 2005 could not be excluded from the scope of the UmwRG. With regard to the second part of Paragraph 5(1) of the UmwRG, the Federal Republic of Germany considers that that provision excludes from its scope procedures which had resulted in an enforceable decision by the time of its entry into force, in accordance with principle of *res judicata*. It considers that, in order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question. According to the Federal Republic of Germany, a Member State is not required to review and annul a judicial decision which has the force of *res judicata*, where it appears to be contrary to EU law.[38] It considers that this is also true of administrative procedures that have been closed, resulting in a decision against which an action has not even been brought, and that have, accordingly, resulted in an enforceable decision and are therefore not open to challenge.

37 — See, judgments in *Köbler* (C-224/01, EU:C:2003:513); *Kapferer* (C-234/04, EU:C:2006:178); and *Fallimento Olimpiclub* (C-2/08, EU:C:2009:506).

38 — See, judgments in *Köbler* (C-224/01, EU:C:2003:513); *Kapferer* (C-234/04, EU:C:2006:178); and *Fallimento Olimpiclub* (C-2/08, EU:C:2009:506).

2. Assessment

a) Preliminary observations

128. The time limit for transposing the provisions of Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75 was 25 June 2005.

129. It is clear from the documents before the Court that the UmwRG, which transposes those provisions into German law, contains several provisions, namely the first and second parts of Paragraph 5(1) and Paragraph 5(4) of the UmwRG, which have in some respects limited the application of that law for the period after 25 June 2005.

130. The Federal Republic of Germany pleads the principle of *res judicata* in order to justify those limitations.

131. While it is true that the principle of *res judicata* is of considerable importance, both in the legal order of the EU and in the national legal orders, a Member State cannot rely upon domestic difficulties or provisions of its own national legal system, even its constitutional system, for the purpose of justifying failure to comply with obligations and periods resulting from EU directives. [39]

132. It is true that, in order to ensure both stability of the law and legal relations and the sound administration of justice, it is important that judicial decisions which have become definitive after all rights of appeal have been exhausted or after expiry of the time limits provided for in that connection can no longer be called into question. Therefore, EU law does not require a national court to disapply domestic rules of procedure conferring finality on a judgment, even if to do so would make it possible to remedy a domestic situation which is incompatible with EU law. [40]

133. However, in the context of proceedings for a failure to fulfil obligations under Article 258 TFEU, after the Court has found that a provision of EU law has been infringed (the only responsibility conferred on the Court by that article), it is incumbent on the Member State concerned, in accordance with Article 260(1) TFEU, to take the measures necessary to comply with the judgment of the Court, since a question concerning those measures does not form part of the subject matter of a judgment under Article 258 TFEU. [41]

134. The circumstances relied on by the Federal Republic of Germany, according to which the temporal limitations on the application of the UmwRG laid down by the first part of Paragraph 5(1) and Paragraph 5(4) of the UmwRG were necessary in order to respect the principle of *res judicata* and, by analogy, the stability of administrative procedures which resulted in an enforceable decision, if established, are also concerned, in any event, where appropriate, with enforcement of the judgment establishing the failure to fulfil obligations and cannot have any influence on the finding of a failure to fulfil obligations in the context of the present complaints.

135. Having made those comments, I shall first consider the fifth complaint.

39 — See judgment in *Commission* v *Italy* (C-100/77, EU:C:1978:78, paragraph 21).

40 — Judgment in *Impresa Pizzarotti* (C-213/13, EU:C:2014:2067, paragraphs 58 and 59 and the case-law cited).

41 — See, to that effect, judgment in *Commission* v *Hungary* (C-288/12, EU:C:2014:237, paragraphs 33 and 34 and the case-law cited).

b) The fifth complaint, relating to the postponement of temporal application in general

136. In paragraph 31 of the judgment in *Gemeinde Altrip and Others* (C-72/12, EU:C:2013:712), the Court held that 'by providing that it was to be transposed into national law by 25 June 2005 at the latest, Directive 2003/35, which inserted Article 10a into Directive 85/337, is to be interpreted as meaning that the rules of national law adopted in order to transpose that article into the national legal order ought also to apply to administrative development consent procedures initiated *before* 25 June 2005 *when they resulted in the granting of development consent after that date*'.[42]

137. However, the first part of Paragraph 5(1) of the UmwRG provides that that law applies only to administrative procedures which were or should have been initiated *after* 25 June 2005.

138. Therefore, I consider that the Federal Republic of Germany, by excluding under the first part of Paragraph 5(1) of the UmwRG the application of that law to all administrative procedures initiated before 25 June 2005, even those that resulted in the granting of development consent after that date, has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

139. Furthermore, the second part of Paragraph 5(1) of the UmwRG provides that its first part is not to apply to administrative procedures which resulted in an enforceable decision before 15 December 2006, the date of entry into force of the UmwRG.

140. It follows that that provision of national law excludes from the application of the UmwRG administrative procedures which have resulted in the granting of development consent between 25 June 2005 (expiry of time limit for transposition) and 15 December 2006.

141. Accordingly, I consider that the Federal Republic of Germany, by excluding, pursuant to the second part of Paragraph 5(1) thereof, the application of the UmwRG to administrative procedures which resulted in an enforceable decision before 15 December 2006, has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

c) The fourth complaint, relating to the temporal limitation on application of the rules concerning actions brought by environmental protection organisations

142. Pursuant to Article 11(3) of Directive 2011/92 and Article 25(3) of Directive 2010/75, environmental protection organisations are deemed to have either a sufficient interest or rights which may be impaired, depending on which of those conditions governing the admissibility of actions is adopted by the national legislation.[43] It follows that those organisations have had privileged access to justice under those articles since their entry into force on 25 June 2005.

143. However, in the judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 36), the Court held that German law made the admissibility of an action brought by an environmental protection organisation conditional upon that organisation showing that the administrative decision contested impaired an individual right which could be categorised as an individual public-law right under national law. The Court held that 'although the national legislature is entitled to confine to individual public-law rights the rights whose infringement may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 10a of Directive 85/337, such a limitation cannot be applied as

42 — Emphasis added.

43 — See judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 40).

such to environmental protection organisations without disregarding the objectives of the last sentence of the third paragraph of Article 10a of Directive 85/337'.[44] In judicial proceedings, environmental protection organisations must necessarily be able to rely on the rules of national law implementing EU environment law and the rules of EU environment law having direct effect.[45]

144. Although, in order to remedy the infringement of the right of environmental protection organisations to privileged access to justice, the Federal Republic of Germany amended the UmwRG, given that the new version of the UmwRG entered into force on 29 January 2013, that amendment has a limited temporal scope. Indeed, it is limited, under Paragraph 5(4) of the UmwRG, to administrative procedures, approval procedures and appeal procedures which were in progress on 12 May 2011 or which were brought after that date and have not yet been closed and resulted in an enforceable decision as of 29 January 2013.

145. It follows that, in accordance with the Commission's observations, other procedures not covered by those amendments still fall within the scope of the old version of the UmwRG.

146. Since environmental protection organisations have had privileged access to justice since 25 June 2005 and the provisions of German law adopted in order to transpose that article into the national legal order ought also to apply to administrative development consent procedures initiated *before* 25 June 2005 when they resulted in the granting of development consent after that date, I consider that the Federal Republic of Germany, by limiting, in accordance with the new version of Paragraph 5(4) of the UmwRG, the temporal application of the right of environmental protection organisations to privileged access to justice, has failed to fulfil its obligations under Article 11 of Directive 2011/92 and Article 25 of Directive 2010/75.

## V – **Costs**

147. Under Article 138(1) of the Rules of Procedure of the Court, the unsuccessful party must be ordered to pay the costs if they have been applied for in the other party's pleadings. Since the Commission has not asked for the Federal Republic of Germany to be ordered to pay the costs, each party must bear its own costs.

148. Pursuant to Article 140(1) of those Rules, which provides that Member States which have intervened in the proceedings are to bear their own costs, the Republic of Austria is to be ordered to bear its own costs.

## VI – **Conclusion**

149. Having regard to the foregoing considerations, and with reference, first, to the complaints relating to the two directives at issue and, lastly, to the complaint concerning only Directive 2011/92, I propose that the Court should rule as follows:

(1) The Federal Republic of Germany,

— by limiting, pursuant to the first sentence of Paragraph 113(1) of the Administrative Court Rules (Verwaltungsgerichtsordnung), the right of individuals to obtain the annulment of a measure to cases where that measure is or has been found to be unlawful by the German administrative courts;

44 — Judgment in *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen* (C-115/09, EU:C:2011:289, paragraph 45).
45 — Ibid. (paragraph 48).

— by requiring, pursuant to Paragraph 46 of the Law on Administrative Procedure (Verwaltungsverfahrensgesetz), the existence of a causal link between, first, the procedural defects relating to public information and participation and, secondly, the purport of the contested final decision in order to justify the annulment of that decision;

— by limiting, in Paragraphs 2(3) of the Law on actions in environmental matters (Umwelt-Rechtsbehelfsgesetz) and Paragraph 73(4) of the Law on Administrative Procedure, the standing to bring proceedings and the scope of judicial review to objections which have already been raised within the period prescribed by the administrative procedure that led to the adoption of the decision;

— by excluding, pursuant to the second part of Paragraph 5(1) thereof, the application of the Law on actions in environmental matters (Umwelt-Rechtsbehelfsgesetz) to administrative procedures which resulted in an enforceable decision before 15 December 2006; and

— by limiting, in accordance with the new version of Paragraph 5(4) of the Law on actions in environmental matters (Umwelt-Rechtsbehelfsgesetz), the temporal application of the right of environmental protection organisations to privileged access to justice,

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

(2) By limiting, in so far as concerns the annulment of decisions on the basis of procedural defects, the scope of Paragraph 4(1) of the Law on actions in environmental matters (Umwelt-Rechtsbehelfsgesetz) to cases in which the requisite environmental impact assessment or requisite preliminary assessment is entirely absent, the Federal Republic of Germany has failed to fulfil its obligations under Article 11 of Directive 2011/92.

(3) The European Commission, the Federal Republic of Germany and the Republic of Austria are ordered to bear their own costs.