JUDGMENT OF THE COURT (Fourth Chamber)

12 May 2011 *

In Case C-115/09,

REFERENCE for a preliminary ruling under Article 234 EC, from the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Germany), made by decision of 5 March 2009, received at the Court on 27 March 2009, in the proceedings

Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV

v

Bezirksregierung Arnsberg,

intervening party:

Trianel Kohlekraftwerk Lünen GmbH & Co. KG,

* Language of the case: German.

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, K. Schiemann, A. Arabadjiev, L. Bay Larsen, and C. Toader, Judges,

Advocate General: E. Sharpston,
Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 10 June 2010,

after considering the observations submitted on behalf of:

— the Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV, by D. Teßmer, and B.W. Wegener, Rechtsanwälte,

— the Bezirksregierung Arnsberg, by D. Bremecker, acting as Agent,

— Trianel Kohlekraftwerk Lünen GmbH & Co. KG, by C. Riese, and U. Karpenstein, Rechtsanwälte,

— the German Government, by M. Lumma and B. Klein, acting as Agents,

— the Greek Government, by G. Karipsiadis, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, and by M. Russo, avvocato dello Stato,

— the European Commission, by J.-B. Laignelot and G. Wilms, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2010,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337').

2 The reference has been made in proceedings between the Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV (the Nordrhein-Westfalen branch of Friends of the Earth, Germany; 'Friends of the Earth') and the

Bezirksregierung Arnsberg, concerning the authorisation granted by the latter to Trianel Kohlekraftwerk GmbH & Co. KG ('Trianel') for the construction and operation of a coal-fired power station in Lünen.

Legal context

International law

3 The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, known as 'the Aarhus Convention', was signed on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters (OJ 2005 L 124, p. 1).

4 Article 9 of the Aarhus Convention provides:

…

2. 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. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2(5) shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

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.

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

and public authorities which contravene provisions of its national law relating to the environment.

4. In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs 1, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive. Decisions under this article shall be given or recorded in writing. Decisions of courts, and whenever possible of other bodies, shall be publicly accessible.

…

European Union ('EU') law

Directive 2003/35

5 Recital 5 in the preamble to Directive 2003/35 states that Community law should be properly aligned with the Aarhus Convention with a view to the ratification of that Convention by the Community.

6 Recital 9 to Directive 2003/35 states:

'Article 9(2) and (4) 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.'

7 Recital 11 to Directive 2003/35 states that Directive 85/337 should be amended to ensure that it is fully compatible with the provisions of the Aarhus Convention and, in particular, with Article 6 and Article 9(2) and (4) thereof.

8 Article 1 of Directive 2003/35 is worded as follows:

'The objective of this Directive is to contribute to the implementation of the obligations arising under the Aarhus Convention, in particular by:

…

(b) improving the public participation and providing for provisions on access to justice within Council Directives 85/337/EEC and 96/61/EC.'

Directive 85/337

9 Article 1(1) of Directive 85/337 provides:

'This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.'

10 Article 1(2) of Directive 85/337 sets out the definitions added by Directive 2993/85 of the concepts of 'the public' and 'the public concerned':

'For the purposes of this Directive:

…

"the public" means: one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups;

"the public concerned" means: the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2); for the purposes of this definition, non-governmental organisations

promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.'

…'

11 Under Article 10a of Directive 85/337, also inserted by Directive 2003/35:

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

(a) having a sufficient interest, or alternatively,

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

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.

…

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 this 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 subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article.

…'

Directive 92/43/EC

12 Article 6(3) of Council Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368) ('the Habitats Directive') provides as follows:

'Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.'

National law

13 Paragraph 42 of the Administrative Court Rules (Verwaltungsgerichtsordnung, BGBl. 1991 I, p. 686; 'the VwGO') lays down the following conditions for the admissibility of actions:

'1. An action can seek to have an administrative measure set aside (action for annulment) or to have the adoption of an administrative measure ordered in the event of a refusal or failure to act (action for enjoinder).

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

14 In addition, the first sentence of Paragraph 113(1) of the VwGO provides that:

1. 'In so far as the administrative measure is unlawful and the claimant's rights have thereby been impaired, the court shall set aside the administrative measure together with any internal appeal decision where appropriate.'

15 The first sentence of Paragraph 2(1) of the Law on environmental impact assessments (Gesetz über die Umweltverträglichkeitsprüfung, BGBl. 2005 I, p. 1757; 'the UVPG') provides that the environmental impact assessment is to form an integral part of administrative procedures aimed at reaching a decision as to whether a project can be authorised.

16 Paragraph 2(3)(1) of the UVPG provides that permits, planning approval decisions and other official decisions as to whether a project can be authorised, taken in the course of an administrative procedure, with the exception of declarations, constitute decisions for the purposes of the first sentence of Paragraph 2(1).

17 Under Paragraph 1(1)(1)(a) of the Law on supplementary provisions governing actions in environmental matters under Directive 2003/35/EC (Umwelt-Rechtsbehelfsgesetz, BGBl. 2006 I, p. 2816; 'the UmwRG'), that law is to apply to actions which challenge decisions for the purposes of Paragraph 2(3) of the UVPG concerning projects in relation to which there may be, under the UVPG, an obligation to implement an environmental impact assessment.

18 Paragraph 2(1)(1) of the UmwRG provides that a domestic or foreign association recognised under Paragraph 3 of the UmwRG may, without being required to maintain an impairment of its own rights, bring an action in accordance with the VwGO to challenge such a decision or a failure to adopt such a decision, provided that the association asserts that the decision contravenes legislative provisions 'which seek to protect the environment, which confer individual rights and which may be relevant to the decision'.

19 Moreover, point (1) of the first sentence of Paragraph 2(5) of the UmwRG provides that such actions are to be deemed to be well founded if the decision infringes legislative provisions 'which seek to protect the environment, which confer individual rights and which are relevant to the decision' and if the infringement 'affects environmental protection concerns included in the objectives which the association, under its statutes, is committed to promote'.

20 Point (2) of the first sentence of Paragraph 5(1) of the Federal Law on protection against the harmful effects of air pollution, noise, vibrations and other types of nuisance on

the environment — the Anti-Pollution Law (Bundes-Immissionsschutzgesetz, BGBl. 2002 I, p. 3830; 'the BImSchG') provides, inter alia, that for the purposes of ensuring high levels of 'environmental protection overall', installations subject to official approval are to be constructed and operated in a manner which ensures the prevention of effects harmful to the environment and other dangers, major disadvantages and major disturbances.

21 The first sentence of Paragraph 8(1) of the BImSchG provides that, on application, a permit may be granted for the construction of an installation or a part of an installation, or the construction and operation of a part of an installation, if: (i) there is a legitimate interest in the grant of a limited permit, (ii) the conditions for the grant of a permit in respect of the component for which a limited permit is sought are satisfied and (iii) a preliminary assessment indicates that no obstacles are present which are from the outset insuperable, thereby precluding the construction and operation of the installation as a whole.

22 Paragraph 9(1) of the BImSchG provides that, on application, a preliminary decision may be issued regarding specific permit conditions and regarding the installation site, provided that the effects of the planned installation can be adequately assessed and that there is a legitimate interest in the issuing of a preliminary decision.

23 Paragraph 61 of the Law on nature protection and countryside conservation (Bundesnaturschutzgesetz, BGBl. 2002 I, p. 1193) provides:

'(1) Independently of any impairment of its own rights, a... recognised association may bring actions in accordance with the [VwGO] challenging

1. Exemptions from prohibitions and requirements intended to protect nature conservation areas, national parks and other protected areas established under Paragraph 33(2) and

2. Planning approval decisions concerning projects which entail an encroachment on nature and the countryside, together with planning permits, where public participation is provided for

…

(2) Actions brought in accordance with subparagraph 1 are not admissible unless the association

1. claims that the adoption of one of the administrative measures mentioned in the first sentence of subparagraph 1 contravenes provisions of the present law, provisions which have been adopted or which continue to apply on the basis or within the framework of the present law, or other provisions which must be taken into account when adopting an administrative measure and whose objectives include concern for nature protection and countryside conservation;

2. is affected as regards a matter which, under its statutes, is within its ambit and in respect of which it is recognised …'

Background and questions referred

24 Trianel — the intervener in the main proceedings — intends to construct and operate a coal-fired power station in Lünen. The power station, which will deliver heat output to a maximum of 1 705 megawatts and 750 megawatts of electricity output, will enter service in 2012. Within eight kilometers of the project site, there are five areas designated as special areas of conservation within the meaning of the Habitats Directive.

25 On 6 May 2008, in the context of the environmental impact assessment of that project, the Bezirksregierung Arnsberg (Arnsberg District Administration) — the defendant in the main proceedings — issued Trianel with a preliminary decision and a partial permit for the project. The preliminary decision stated that there were no legal objections to the project.

26 On 16 June 2008, Friends of the Earth initiated proceedings for the annulment of those measures before the Oberverwaltungsgericht für das Land Nordrhein-Westfalen (Higher Administrative Court for the Nordrhein-Westfalen Land; 'the referring court'). Friends of the Earth relied, in particular, on an infringement of the provisions transposing into German law the Habitats Directive and, in particular, Article 6 thereof.

27 According to the referring court, those measures infringe Article 6(3) of the Habitats Directive inasmuch as the environmental impact assessment of the project at issue did not show that it was unlikely to have a significant effect on the special areas of conservation located nearby.

28 The referring court finds that, on the basis of domestic law, an environmental protection organisation is not entitled to rely on infringement of the law for the protection of water and nature or on the precautionary principle laid down in point (2) of the

first sentence of Paragraph 5(1) of the BImSchG, as those provisions do not confer rights on individuals for the purposes of point (1) of Paragraph 2(1) and point (1) of Paragraph 2(5) of the UmwRG.

29 It states that, accordingly, the right of action accorded to non-governmental organisations is comparable with that provided for under the general rules of administrative procedural law governing actions for annulment and, in particular, under Paragraph 42(2) and the first sentence of Paragraph 113(1) of the VwGO, which provide that an action challenging an administrative measure will be admissible only if the administrative measure affects the claimant's rights, that is to say, his individual public law rights.

30 The referring court adds that the decisive criterion for establishing whether a provision of national law protects individual rights is the extent to which that provision adequately specifies and delimits the interest or right protected, envisages the way in which the right might be regarded as impaired and determines the class of persons protected.

31 The referring court finds in that regard that, in the field of anti-pollution law, point (2) of the first sentence of Paragraph 5(1) of the BImSchG — in the same way, moreover, as the law for the protection of water and nature — primarily concerns the general public and not the protection of individual rights.

32 In addition, the referring court notes that the project at issue does not come within the scope of Paragraph 61 of the Law on nature protection and countryside conservation, which permits, in certain cases, an exception to be made to that condition of admissibility for actions brought by recognised associations in the environmental field.

33 Since it considers that such a restriction on access to justice could nevertheless undermine the useful effect of Directive 85/337, the referring court wonders whether the action brought by Friends of the Earth ought not to be allowed on the basis of Article 10a of that directive.

34 In those circumstances, the Oberverwaltungsgericht für das Land Nordrhein Westfalen decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Does Article 10a of Directive 85/337 … require it to be possible, for non-governmental organisations wishing to bring an action before the courts of a Member State in which administrative procedural law requires an applicant to maintain the impairment of a right, to argue that there has been an infringement of any environmental provision relevant to the approval of a project, including provisions which are intended to serve the interests of the general public alone rather than those which, at least in part, protect the legal interests of individuals?

(2) Unless Question 1 is answered unreservedly in the affirmative:

Does Article 10a of Directive 85/337 … require it to be possible, for non-governmental organisations wishing to bring an action before the courts of a Member State in which administrative procedural law requires an applicant to maintain the impairment of a right, to base their argument on the infringement of environmental provisions relating to the approval of a project which are derived directly from Community law or which transpose Community environmental legislation into domestic law, including provisions intended to serve the interests of the general public alone, rather than those which, at least in part, protect the legal interests of individuals?

(a) If Question 2 calls, in principle, for an affirmative response:

Must provisions of Community environmental legislation satisfy any substantive conditions in order to be capable of forming the legal basis for an action?

(b) If Question 2(a) is answered in the affirmative:

What are the relevant substantive conditions (for example, direct effect, protection objective or aim of the legislation)?

(3) If either Question 1 or Question 2 is answered in the affirmative:

Does the directive directly entitle non-governmental organisations to a right of access to the courts which exceeds that provided for under the rules laid down in national law?'

The questions referred

Questions 1 and 2

35 By its first two questions, which it is appropriate to examine together, the referring court asks essentially whether Article 10a of Directive 85/337 precludes legislation

which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of Directive 85/337 ('environmental protection organisations'), to rely before the courts, in an action contesting a decision authorising projects likely to have 'significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of a rule which protects only the interests of the general public and not the interests of individuals. The referring court also asks the Court whether Article 10a of Directive 85/337 precludes such legislation in general or only in so far as it does not permit an organisation of that nature to rely before the courts on particular provisions of environment law, whether of Community or purely national origin.

36 It emerges from the order for reference that the question is justified by the fact that the applicable national legislation makes the admissibility of an action such as that brought by the applicant in the main proceedings conditional upon the applicant showing that the administrative decision contested impairs an individual right which, under national law, can be categorised as an individual public-law right.

37 First of all, it should be noted that the first paragraph of Article 10a of Directive 85/337 provides that the decisions, acts or omissions referred to in that article must be actionable before a court of law through a review procedure 'to challenge [their] substantive or procedural legality', without in any way limiting the pleas that could be put forward in support of such an action.

38 With regard to the conditions for the admissibility of such actions, Article 10a of Directive 85/337 provides 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.

39 The first sentence of the third paragraph of Article 10a of Directive 85/337 further states that what constitutes a sufficient interest and impairment of a right is to be determined by the Member States consistently with the objective of giving the public concerned 'wide access to justice'.

40 With regard to actions brought by environmental protection organisations, the second and third sentences of the third paragraph of Article 10a of Directive 85/337 add that, to that end, such organisations must be regarded as having either a sufficient interest or rights which may be impaired, depending on which of those conditions for admissibility is adopted in the national legislation.

41 Those various provisions must be interpreted in the light of, and having regard to, the objectives of the Aarhus Convention, with which — as is stated in recital 5 to Directive 2003/35 — EU law should be 'properly aligned'.

42 It follows that, whichever option a Member State chooses for the admissibility of an action, environmental protection organisations are entitled, pursuant to Article 10a of Directive 85/337, to 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 covered by that article.

43 Lastly, it should also be recalled that where, in the absence of EU rules governing the matter, it is for the legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from EU law, those detailed rules must not be less favourable than those governing similar domestic actions

(principle of equivalence) and must not make it in practice impossible or excessively difficult to exercise rights conferred by EU law (principle of effectiveness).

44 Thus, although it is for the Member States to determine, when their legal system so requires and within the limits laid down in Article 10a of Directive 85/337, what rights can give rise, when infringed, to an action concerning the environment, they cannot, when making that determination, deprive environmental protection organisations which fulfil the conditions laid down in Article 1(2) of that directive of the opportunity of playing the role granted to them both by Directive 85/337 and by the Aarhus Convention.

45 With regard to legislation such as that at issue in the main proceedings, 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.

46 If, as is clear from that provision, those organisations must be able to rely on the same rights as individuals, it would be contrary to the objective of giving the public concerned wide access to justice and at odds with the principle of effectiveness if such organisations were not also allowed to rely on the impairment of rules of EU environment law solely on the ground that those rules protect the public interest. As the dispute in the main proceedings shows, that very largely deprives those organisations of the possibility of verifying compliance with the rules of that branch of law, which, for the most part, address the public interest and not merely the protection of the interests of individuals as such.

47 It follows first that the concept of 'impairment of a right' cannot depend on conditions which only other physical or legal persons can fulfil, such as the condition of being a more or less close neighbour of an installation or of suffering in one way or another the effects of the installation's operation.

48 It follows more generally that the last sentence of the third paragraph of Article 10a of Directive 85/337 must be read as meaning that the 'rights capable of being impaired' which the environmental protection organisations are supposed to enjoy must necessarily include the rules of national law implementing EU environment law and the rules of EU environment law having direct effect.

49 In that regard, in order to give the referring court the most useful answer possible, it should be pointed out that a plea raised against a contested decision which alleges infringement of the rules of national law flowing from Article 6 of the Habitats Directive must be capable of being relied on by an environmental protection organisation.

50 Consequently, the answer to Questions 1 and 2, read together, is that Article 10a of Directive 85/337 precludes legislation which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of a rule flowing from EU environment law and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals.

Question 3

51 By its third question, the referring court asks the Court, essentially, whether an environmental protection association can derive, from the last sentence of the third paragraph of Article 10a of Directive 85/337, the right to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of the rules of national law flowing from Article 6 of the Habitats Directive, even where, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals, national procedural law does not permit this.

52 That question arises in the event that it would not be possible for the referring court to interpret national procedural law in a manner consistent with the requirements of EU law.

53 In that regard, it should first of all be borne in mind that the Member States' obligation under a directive to achieve the result envisaged by that directive and their duty to take all appropriate measures, whether general or particular, to ensure the fulfilment of that obligation are binding on all the authorities of the Member States, including, for matters within their jurisdiction, the courts (see, to that effect, Case C-555/07 *Kücükdeveci* [2010] ECR I-365, paragraph 47 and the case-law cited).

54 The Court has held that whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied on before the national courts by individuals against the State, where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (see, inter alia, Case C-138/07 *Cobelfret* [2009] ECR I-731, paragraph 58).

55 It should be noted in that regard that, taken as a whole, Article 10a of Directive 85/337 leaves the Member States a significant discretion both to determine what constitutes impairment of a right and, in particular, to determine the conditions for the admissibility of actions and the bodies before which such actions may be brought.

56 The same is not true, however, of the provisions laid down in the last two sentences of the third paragraph of Article 10a of Directive 85/337.

57 By providing that the interest of any non-governmental organisation meeting the requirements referred to in Article 1(2) of Directive 85/337 are to be deemed sufficient and that such organisations are also to be deemed to have rights capable of being impaired, those provisions lay down rules which are precise and not subject to other conditions.

58 In addition, as was stated above, the rights which environmental protection organisations may rely on in judicial proceedings pursuant to Article 10a of Directive 85/337 include the rules of EU environment law and, in particular, the rules of national law flowing from Article 6 of the Habitats Directive.

59 The answer to Question 3 is therefore that non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, can derive from the last sentence of the third paragraph of Article 10a of Directive 85/337 a right to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of the rules of national law flowing from

Article 6 of the Habitats Directive, even where, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals, national procedural law does not permit this.

Costs

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

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

1. Article 10a of Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, precludes legislation which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, on the infringement of a rule flowing from the environment law of the European Union and

intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals.

2. Such a non-governmental organisation can derive, from the last sentence of the third paragraph of Article 10a of Directive 85/337, as amended by Directive 2003/35, the right to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337, as amended, on the infringement of the rules of national law flowing from Article 6 of Directive 92/43/EC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105/EC of 20 November 2006, even where, on the ground that the rules relied on protect only the interests of the general public and not the interests of individuals, national procedural law does not permit this.

[Signatures]