Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

28 May 2020*

(Reference for a preliminary ruling – Environment – Aarhus Convention – Directive 2011/92/EU – Assessment of the effects of certain projects on the environment – Public participation in the decision-making process – Irregularities vitiating the procedure for approval of a project – Access to justice – Limitations laid down by national law – Directive 2000/60/EC – EU action in the field of water policy – Deterioration of a body of groundwater – Arrangements for assessment – Right of individuals to take measures in order to prevent pollution – Standing to bring proceedings before the national courts)

In Case C-535/18,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesverwaltungsgericht (Federal Administrative Court, Germany), made by decision of 25 April 2018, received at the Court on 16 August 2018, in the proceedings

IL,

JK,

KJ,

LI,

NG,

MH,

OF,

PE,

RC and SB, as heirs of QD,

TA,

UZ,

VY,

* Language of the case: German.

WX

v

Land Nordrhein-Westfalen,

THE COURT (First Chamber),

composed of J.-C. Bonichot (Rapporteur), President of the Chamber, R. Silva de Lapuerta, Vice-President of the Court, M. Safjan, L. Bay Larsen and C. Toader, Judges,

Advocate General: G. Hogan,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 19 September 2019,

after considering the observations submitted on behalf of:

– IL, JK, KJ, LI, NG, MH, OF, PE, RC and SB, TA, UZ, VY and WX, by R. Nebelsieck, J. Mittelstein and K. Fock, Rechtsanwälte,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by E. Manhaeve and M. Noll-Ehlers, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 November 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6 and Article 11(1)(b) 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 (OJ 2012 L 26, p. 1) and of Article 4(1)(a)(i) to (iii) and 4(1)(b)(i) of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

2 The request has been made in the course of proceedings between various individuals and Land Nordrhein-Westfalen (*Land* of North Rhine-Westphalia, Germany) relating to a decision by the authorities of the Bezirksregierung Detmold (District Government of Detmold, Germany) of 27 September 2016 approving the plan for the construction of an approximately 3.7 km-long section of motorway.

Legal framework

International law

3 The Convention on access to information, public participation in decision-making and access to justice in environmental matters, signed at Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1; 'the Aarhus Convention'), provides in Article 9(3):

'… 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.'

EU law

Directive 2011/92

4 Recitals 7 and 19 to 21 of Directive 2011/92 are worded as follows:

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

…

(19) Among the objectives of the Aarhus Convention is the desire to guarantee rights of public participation in decision-making in environmental matters in order to contribute to the protection of the right to live in an environment which is adequate for personal health and well-being.

(20) Article 6 of the Aarhus Convention provides for public participation in decisions on the specific activities listed in Annex I thereto and on activities not so listed which may have a significant effect on the environment.

(21) 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 that Convention.'

5 Article 1(1) and (2) of that directive provides as follows:

'1. 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.

2. For the purposes of this Directive, the following definitions shall apply:

(a) "project" means:

– the execution of construction works or of other installations or schemes,

– other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

(b) "developer" means the applicant for authorisation for a private project or the public authority which initiates a project;

(c) "development consent" means the decision of the competent authority or authorities which entitles the developer to proceed with the project;

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

(e) "public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making procedures referred to in Article 2(2). For the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest;

(f) "competent authority or authorities" means that authority or those authorities which the Member States designate as responsible for performing the duties arising from this Directive.'

6 Article 3 of that directive provides:

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

(a) human beings, fauna and flora;

(b) soil, water, air, climate and the landscape;

(c) material assets and the cultural heritage;

(d) the interaction between the factors referred to in points (a), (b) and (c).'

7 Article 5 of Directive 2011/92 provides:

‘1. In the case of projects which, pursuant to Article 4, are to be made subject to an environmental impact assessment in accordance with this Article and Articles 6 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV inasmuch as:

(a) the Member States consider that the information is relevant to a given stage of the consent procedure and to the specific characteristics of a particular project or type of project and of the environmental features likely to be affected;

(b) the Member States consider that a developer may reasonably be required to compile this information having regard, inter alia, to current knowledge and methods of assessment.

2. Member States shall take the necessary measures to ensure that, if the developer so requests before submitting an application for development consent, the competent authority shall give an opinion on the information to be supplied by the developer in accordance with paragraph 1. The competent authority shall consult the developer and authorities referred to in Article 6(1) before it gives its opinion. The fact that the authority has given an opinion under this paragraph shall not preclude it from subsequently requiring the developer to submit further information.

Member States may require the competent authorities to give such an opinion, irrespective of whether the developer so requests.

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

(a) a description of the project comprising information on the site, design and size of the project;

(b) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;

(c) the data required to identify and assess the main effects which the project is likely to have on the environment;

(d) an outline of the main alternatives studied by the developer and an indication of the main reasons for his choice, taking into account the environmental effects;

(e) a non-technical summary of the information referred to in points (a) to (d).

4. Member States shall, if necessary, ensure that any authorities holding relevant information, with particular reference to Article 3, make this information available to the developer.’

8 Article 6 of Directive 2011/92 is worded as follows:

‘…

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

(a) the request for development consent;

(b) the fact that the project is subject to an environmental impact assessment procedure and, where relevant, the fact that Article 7 applies;

(c) details of the competent authorities responsible for taking the decision, those from which relevant information can be obtained, those to which comments or questions can be submitted, and details of the time schedule for transmitting comments or questions;

(d) the nature of possible decisions or, where there is one, the draft decision;

(e) an indication of the availability of the information gathered pursuant to Article 5;

(f) an indication of the times and places at which, and the means by which, the relevant information will be made available;

(g) details of the arrangements for public participation made pursuant to paragraph 5 of this Article.

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

(a) any information gathered pursuant to Article 5;

(b) in accordance with national legislation, the main reports and advice issued to the competent authority or authorities at the time when the public concerned is informed in accordance with paragraph 2 of this Article;

(c) in accordance with the provisions of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information [and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26)], information other than that referred to in paragraph 2 of this Article which is relevant for the decision in accordance with Article 8 of this Directive and which only becomes available after the time the public concerned was informed in accordance with paragraph 2 of this Article.

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

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

6. Reasonable time-frames for the different phases shall be provided, allowing sufficient time for informing the public and for the public concerned to prepare and participate effectively in environmental decision-making subject to the provisions of this Article.'

9 Article 11(1) to (3) of that directive provides:

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

(a) having a sufficient interest, or alternatively;

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

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.'

10 Annex IV to that directive, entitled 'Information referred to in Article 5(1)', provides, in paragraph 4, for:

'A description of the likely significant effects of the proposed project on the environment resulting from:

(a) the existence of the project;

(b) the use of natural resources;

(c) the emission of pollutants, the creation of nuisances and the elimination of waste.'

11 A footnote to that paragraph 4 states that 'this description should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the project'.

Directive 2006/118/EC

12 Article 3(1) of Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration (OJ 2006 L 372, p. 19), provides:

'For the purposes of the assessment of the chemical status of a body or a group of bodies of groundwater pursuant to Section 2.3 of Annex V to Directive [2000/60], Member States shall use the following criteria:

(a) groundwater quality standards as referred to in Annex I;

(b) threshold values to be established by Member States in accordance with the procedure set out in Part A of Annex II for the pollutants, groups of pollutants and indicators of pollution which, within the territory of a Member State, have been identified as contributing to the characterisation of bodies or groups of bodies of groundwater as being at risk, taking into account at least the list contained in Part B of Annex II.

The threshold values applicable to good chemical status shall be based on the protection of the body of groundwater in accordance with Part A, points 1, 2 and 3, of Annex II, having particular regard to its impact on, and interrelationship with, associated surface waters and directly dependent terrestrial ecosystems and wetlands and shall *inter alia* take into account human toxicology and ecotoxicology knowledge.'

13 Article 4 of that directive provides:

'1. Member States shall use the procedure described in paragraph 2 to assess the chemical status of a body of groundwater. Where appropriate, Member States may group bodies of groundwater in accordance with Annex V to Directive [2000/60] when carrying out this procedure.

2. A body or a group of bodies of groundwater shall be considered to be of good chemical status when:

(a) the relevant monitoring demonstrates that the conditions set out in Table 2.3.2 of Annex V to Directive [2000/60] are being met; or

(b) the values for the groundwater quality standards listed in Annex I and the relevant threshold values established in accordance with Article 3 and Annex II are not exceeded at any monitoring point in that body or group of bodies of groundwater; or

(c) the value for a groundwater quality standard or threshold value is exceeded at one or more monitoring points but an appropriate investigation in accordance with Annex III confirms that:
   (i) on the basis of the assessment referred to in paragraph 3 of Annex III, the concentrations of pollutants exceeding the groundwater quality standards or threshold values are not considered to present a significant environmental risk, taking into account, where appropriate, the extent of the body of groundwater which is affected;
   (ii) the other conditions for good groundwater chemical status set out in Table 2.3.2 in Annex V to Directive [2000/60] are being met, in accordance with paragraph 4 of Annex III to this Directive;

(iii) for bodies of groundwater identified in accordance with Article 7(1) of Directive [2000/60], the requirements of Article 7(3) of that Directive are being met, in accordance with paragraph 4 of Annex III to this Directive;
(iv) the ability of the body of groundwater or of any of the bodies in the group of bodies of groundwater to support human uses has not been significantly impaired by pollution.

3. Choice of the groundwater monitoring sites has to satisfy the requirements of Section 2.4 of Annex V to Directive [2000/60] on being designed so as to provide a coherent and comprehensive overview of groundwater chemical status and to provide representative monitoring data.

4. Member States shall publish a summary of the assessment of groundwater chemical status in the river basin management plans in accordance with Article 13 of Directive [2000/60].

This summary, established at the level of the river basin district or the part of the international river basin district falling within the territory of a Member State, shall also include an explanation as to the manner in which exceedances of groundwater quality standards or threshold values at individual monitoring points have been taken into account in the final assessment.

5. If a body of groundwater is classified as being of good chemical status in accordance with paragraph 2(c), Member States, in accordance with Article 11 of Directive [2000/60], shall take such measures as may be necessary to protect aquatic ecosystems, terrestrial ecosystems and human uses of groundwater dependent on the part of the body of groundwater represented by the monitoring point or points at which the value for a groundwater quality standard or the threshold value has been exceeded.'

Directive 2000/60

14 Recitals 23 to 26 and 37 of Directive 2000/60 are worded as follows:

'(23) Common principles are needed in order to coordinate Member States' efforts to improve the protection of Community waters in terms of quantity and quality, to promote sustainable water use, …, to protect aquatic ecosystems, and terrestrial ecosystems and wetlands directly depending on them, and to safeguard and develop the potential uses of Community waters.

(24) Good water quality will contribute to securing the drinking water supply for the population.

(25) Common definitions of the status of water in terms of quality and, where relevant for the purpose of the environmental protection, quantity should be established. Environmental objectives should be set to ensure that good status of surface water and groundwater is achieved throughout the Community and that deterioration of the status of waters is prevented at Community level.

(26) Member States should aim to achieve the objective of at least good water status by defining and implementing the necessary measures within integrated programmes of measures, taking into account existing Community requirements. Where good water status already exists, it should be maintained. For groundwater, in addition to the requirements of good status, any significant and sustained upward trend in the concentration of any pollutant should be identified and reversed.

…

(37) Member States should identify waters used for the abstraction of drinking water and ensure compliance with Council Directive 80/778/EEC of 15 July 1980 relating to the quality of water intended for human consumption [(OJ 1980 L 229, p. 11)].'

15 Article 1 of Directive 2000/60 defines its purpose as follows:

'The purpose of this Directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which:

(a) prevents further deterioration and protects and enhances the status of aquatic ecosystems and, with regard to their water needs, terrestrial ecosystems and wetlands directly depending on the aquatic ecosystems;

(b) promotes sustainable water use based on a long-term protection of available water resources;

…

(d) ensures the progressive reduction of pollution of groundwater and prevents its further pollution, and

…

and thereby contributes to:

– the provision of the sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use,

– a significant reduction in pollution of groundwater,

– …'

16 Article 2 of that directive contains the following definitions in paragraphs 2, 12, 19, 20, 25, 28, 31 and 33:

'2. "Groundwater" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or subsoil.

…

12. "Body of groundwater" means a distinct volume of groundwater within an aquifer or aquifers.

…

19. "Groundwater status" is the general expression of the status of a body of groundwater, determined by the poorer of its quantitative status and its chemical status.

20. "Good groundwater status" means the status achieved by a groundwater body when both its quantitative status and its chemical status are at least "good".

…

25. “Good groundwater chemical status” is the chemical status of a body of groundwater which meets all the conditions set out in table 2.3.2 of Annex V.

…

28. “Good quantitative status” is the status defined in table 2.1.2 of Annex V.

…

31. “Pollutant” means any substance liable to cause pollution, in particular those listed in Annex VIII.

…

33. “Pollution” means the direct or indirect introduction, as a result of human activity, of substances or heat into the air, water or land which may be harmful to human health or the quality of aquatic ecosystems or terrestrial ecosystems directly depending on aquatic ecosystems, which result in damage to material property, or which impair or interfere with amenities and other legitimate uses of the environment.’

17 Article 4(1)(a) and (b) of Directive 2000/60 is worded as follows:

‘1. In making operational the programmes of measures specified in the river basin management plans:

(a) for surface waters
   (i) Member States shall implement the necessary measures to prevent deterioration of the status of all bodies of surface water, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8;
   (ii) Member States shall protect, enhance and restore all bodies of surface water, subject to the application of subparagraph (iii) for artificial and heavily modified bodies of water, with the aim of achieving good surface water status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
   (iii) Member States shall protect and enhance all artificial and heavily modified bodies of water, with the aim of achieving good ecological potential and good surface water chemical status at the latest 15 years from the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8;
   (iv) Member States shall implement the necessary measures in accordance with Article 16(1) and (8), with the aim of progressively reducing pollution from priority substances and ceasing or phasing out emissions, discharges and losses of priority hazardous substances

without prejudice to the relevant international agreements referred to in Article 1 for the parties concerned;

(b) for groundwater
   (i) Member States shall implement the measures necessary to prevent or limit the input of pollutants into groundwater and to prevent the deterioration of the status of all bodies of groundwater, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
   (ii) Member States shall protect, enhance and restore all bodies of groundwater, ensure a balance between abstraction and recharge of groundwater, with the aim of achieving good groundwater status at the latest 15 years after the date of entry into force of this Directive, in accordance with the provisions laid down in Annex V, subject to the application of extensions determined in accordance with paragraph 4 and to the application of paragraphs 5, 6 and 7 without prejudice to paragraph 8 of this Article and subject to the application of Article 11(3)(j);
   (iii) Member States shall implement the measures necessary to reverse any significant and sustained upward trend in the concentration of any pollutant resulting from the impact of human activity in order progressively to reduce pollution of groundwater.

Measures to achieve trend reversal shall be implemented in accordance with paragraphs 2, 4 and 5 of Article 17, taking into account the applicable standards set out in relevant Community legislation, subject to the application of paragraphs 6 and 7 and without prejudice to paragraph 8'.

18 Article 4(4)(c) of Directive 2000/60 provides:

'4. The deadlines established under paragraph 1 may be extended for the purposes of phased achievement of the objectives for bodies of water, provided that no further deterioration occurs in the status of the affected body of water when all of the following conditions are met:

…

(c) Extensions shall be limited to a maximum of two further updates of the river basin management plan except in cases where the natural conditions are such that the objectives cannot be achieved within this period.'

19 Article 4(7)(a) to (d) of that directive is worded as follows:

'7. Member States will not be in breach of this Directive when:

– failure to achieve good groundwater status, good ecological status or, where relevant, good ecological potential or to prevent deterioration in the status of a body of surface water or groundwater is the result of new modifications to the physical characteristics of a surface water body or alterations to the level of bodies of groundwater, or

– failure to prevent deterioration from high status to good status of a body of surface water is the result of new sustainable human development activities

and all the following conditions are met:

(a) all practicable steps are taken to mitigate the adverse impact on the status of the body of water;

(b) the reasons for those modifications or alterations are specifically set out and explained in the river basin management plan required under Article 13 and the objectives are reviewed every six years;

(c) the reasons for those modifications or alterations are of overriding public interest and/or the benefits to the environment and to society of achieving the objectives set out in paragraph 1 are outweighed by the benefits of the new modifications or alterations to human health, to the maintenance of human safety or to sustainable development, and

(d) the beneficial objectives served by those modifications or alterations of the water body cannot for reasons of technical feasibility or disproportionate cost be achieved by other means which are a significantly better environmental option.'

20 Article 13(7) of that directive provides:

'River basin management plans shall be reviewed and updated at the latest 15 years after the date of entry into force of this Directive and every six years thereafter.'

21 Paragraphs 1 and 2 of Article 17 of Directive 2000/60, entitled 'Strategies to prevent and control pollution of groundwater', provide:

'1. The European Parliament and the Council [of the European Union] shall adopt specific measures to prevent and control groundwater pollution. Such measures shall be aimed at achieving the objective of good groundwater chemical status in accordance with Article 4(1)(b) and shall be adopted, acting on the proposal presented within two years after the entry into force of this Directive, by the [European] Commission in accordance with the procedures laid down in the Treaty.

2. In proposing measures the Commission shall have regard to the analysis carried out according to Article 5 and Annex II. Such measures shall be proposed earlier if data are available and shall include:

(a) criteria for assessing good groundwater chemical status, in accordance with Annex II.2.2 and Annex V 2.3.2 and 2.4.5;

…'

22 Point 2.3 of Annex V to Directive 2000/60 concerns the assessment of groundwater chemical status. Point 2.3.1 of that annex mentions 'conductivity' and 'concentrations of pollutants' as the 'parameters for the determination of groundwater chemical status'.

23 Point 2.3.2 of Annex V to that directive defines 'good groundwater chemical status' as follows:

'Definition of good groundwater chemical status

Elements	Good status
General	The chemical composition of the groundwater body is such that the concentrations of pollutants: — as specified below, do not exhibit the effects of saline or other intrusions — do not exceed the quality standards applicable under other relevant Community legislation in accordance with Article 17 — are not such as would result in failure to achieve the environmental objectives specified under Article 4 for associated surface waters nor any significant diminution of the ecological or chemical quality of such bodies nor in any significant damage to terrestrial ecosystems which depend directly on the groundwater body
…	…'

24 Point 2.4 of Annex V to that directive concerns the monitoring of groundwater chemical status and provides, inter alia, in point 2.4.1, that 'the monitoring network shall be designed so as to provide a coherent and comprehensive overview of groundwater chemical status within each river basin and to detect the presence of long-term anthropogenically induced upward trends in pollutants'.

25 Point 2.4.5 of Annex V to that directive concerns the interpretation and presentation of groundwater chemical status. It is worded as follows:

'In assessing status, the results of individual monitoring points within a groundwater body shall be aggregated for the body as a whole. Without prejudice to the Directives concerned, for good status to be achieved for a groundwater body, for those chemical parameters for which environmental quality standards have been set in Community legislation:

– the mean value of the results of monitoring at each point in the groundwater body or group of bodies shall be calculated, and

– in accordance with Article 17 these mean values shall be used to demonstrate compliance with good groundwater chemical status.

Subject to point 2.5, Member States shall provide a map of groundwater chemical status, colour-coded as indicated below:

Good: green

Poor: red

…

These maps shall be included in the river basin management plan.'

German law

26 Paragraph 46 of the Verwaltungsverfahrensgesetz (Law on administrative procedure) of 23 January 2003 (BGBl. 2003 I, p. 102), which concerns the effects of procedural and formal defects, provides:

'An application for the annulment of an administrative act 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.'

27 Paragraph 4 of the Umweltrechtsbehelfsgesetz (Law on environmental appeals) of 7 December 2006 (BGBl. 2006 I, p. 2816), in the version published on 23 August 2017 (BGBl. 2017 I, p. 3290), is worded as follows:

'(1) The annulment of a decision approving a project referred to in points 1 to 2b of the first sentence of Paragraph 1(1) may be requested where:

1.
   (a) an environmental assessment as required by the provisions of the Gesetz über die Umweltverträglichkeitsprüfung [(Law on environmental impact assessments) of 24 February 2010 (BGBl. 2010 I, p. 94)], … or
   (b) a case-by-case preliminary evaluation of the need to carry out an environmental assessment, as required by the provisions of the Law on environmental impact assessments

…

has neither been carried out at the time when it was due nor thereafter,

2. a required public participation within the meaning of Paragraph 18 of the Law on environmental impact assessments or within the meaning of Paragraph 10 of the Bundes-Immissionsschutzgesetz [(Federal Law on protection from emissions)] has neither been carried at the time it was due nor thereafter, or

3. another procedural defect has occurred that
   (a) has not been remedied;
   (b) is comparable in nature and gravity to the cases referred to in points 1 and 2; and
   (c) has deprived the public concerned of the opportunity, as provided by law, to participate in the decision-making process; such participation in the decision-making process shall include access to documents, which must be displayed for consultation by the public.

…

(1a) Paragraph 46 of the Law on administrative procedure … shall apply to procedural errors not covered by subparagraph (1) above. If the court cannot establish whether a procedural error as per the first sentence has influenced the decision on the matter, it shall be presumed that this was the case.

…

(3) Subparagraphs (1) to (2) shall be applicable to actions seeking legal remedies brought by

1. persons within the meaning of point 1 of Paragraph 61 of the Verwaltungsgerichtsordnung [(Administrative Court Rules) of 21 January 1960 (BGBl. 1960 I, p. 17)] and associations within the meaning of point 2 of Paragraph 61 of those rules, and

2. associations which meet the requirements of Paragraph 3(1) or Paragraph 2(2).

Point 3 of the first sentence of the first subparagraph shall apply to actions seeking legal remedies filed by persons and associations under point 1 of the first sentence, subject to the condition that the annulment of a decision may be requested only if the procedural error has deprived the party concerned of the opportunity to participate in the decision-making process as provided for by law.

…'

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

28 By decision of 27 September 2016 ('the contested decision'), the district of Detmold ('the authorising authority') approved, at the request of the road-building agency for the *Land* of North Rhine-Westphalia, the plan for the construction of the section of the A 33 motorway/federal road B 61 comprising three to four lanes over a distance of approximately 3.7 kilometres.

29 That decision authorised the developer to discharge rainwater running off the road surfaces into three bodies of surface water or into the groundwater. In that regard, the decision contained a number of provisions in annexes intended to ensure that waters are protected, in respect of both the discharge of rainwater into surface waters and its infiltration into the groundwater.

30 The documents relating to the project at issue were made available to the public from 30 August to 29 September 2010. While the documents relating to traffic, species protection and wildlife were mentioned on the notice for that public display, this was not the case in respect of the documents relating to noise protection and water drainage, which gave rise to a number of objections from the public.

31 Taking the consultation procedure into account, the developer made various amendments to the plan, in particular with regard to rainwater drainage. In addition, it created a 'cover page' listing the documents made available to the public. Further objections were raised by the public during the further consultation which was organised from 19 May to 18 June 2014.

32 Following the approval of the project at issue, the claimants in the main proceedings, who are subject to expropriation or have a domestic well within the area covered by the project for their private water supply, have brought an action before the referring court, the Bundesverwaltungsgericht (Federal Administrative Court, Germany), against the contested decision. In that context, that court is required to carry out a full examination of the lawfulness of that decision.

33 In that regard, the Bundesverwaltungsgericht (Federal Administrative Court) notes that, before the construction plan was approved, the bodies of water were not subject to any documented monitoring relating to the protection of the bodies of water concerned.

34 It is true that the authorising authority stated that, during the consent procedure, the bodies of water concerned had been monitored. However, it was not until the judicial proceedings were underway that that authority provided a technical study on water drainage, totalling 48 pages, describing the bodies of water concerned and the impacts of the project at issue on their qualitative elements ('the technical study on water drainage'). For that reason, the referring court takes the view that the public was not sufficiently informed of the environmental effects of the project at issue during the course of the consent procedure, which, therefore, is vitiated by a procedural defect.

35 In the present case, however, according to the Bundesverwaltungsgericht (Federal Administrative Court), that procedural defect is not such as to lead to annulment of the contested decision since it had no effect on the meaning of that decision. In those circumstances, under the applicable German law, a procedural defect of that kind cannot be invoked by an individual claimant and may result in the annulment of the decision granting authorisation for the plan only if that claimant has actually been deprived of the opportunity to participate in the decision-making process.

36 Next, the referring court expresses uncertainty as to whether it is precluded that the monitoring relating to the prohibition of deterioration of the bodies of water concerned by a project may take place only after the approval decision has been adopted. It considers that Directive 2000/60 could require such monitoring to be carried out before that point as part of a transparent administrative procedure. This would mean that it is not for the courts, in judicial proceedings, but rather for the competent administrative authorities to take the necessary steps and to prepare the requisite documentation.

37 If that interpretation of Directive 2000/60 were to be accepted, the referring court considers that it must decide whether, in the case in the main proceedings, the administrative procedure should be reopened in order for a fresh public consultation to be carried out.

38 In that context, it would be necessary to answer the question whether the documents made available to the public under Article 6 of Directive 2011/92 must systematically include a report on compliance with the legislation on water quality. The Bundesverwaltungsgericht (Federal Administrative Court) takes the view that, in the case where a developer carries out a check of the conditions laid down in Directive 2000/60, the report that it submits to the authorising authority should be regarded as one of the 'main reports' within the meaning of Article 6(3)(b) of Directive 2011/92 and should, therefore, be accessible during the public consultation phase.

39 However, according to the case-law of the Bundesverwaltungsgericht (Federal Administrative Court), further public participation is not always necessary. In the present case, the technical study on water drainage was not drafted until after the delivery of the judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433), and, therefore, after the public consultation phase. In that very specific situation, fresh public participation may be dispensed with ina smuch as the various documents that were accessible to the public before the project was approved satisfy two conditions. First, those documents must, in essence, contain the same information as a report that, in the light of the criteria laid down in Directive 2000/60, examines the effects of the project on the water. Secondly, the available documents and that report must arrive at the same conclusions.

40 Furthermore, the referring court takes the view that the obligation to prevent deterioration of the status of bodies of water relates to both surface water and groundwater and that considerations resulting from the judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433), in respect of surface water can be broadly transposed to groundwater. However, in order to determine whether or not there is a deterioration of the chemical status of a body of groundwater, Directive 2000/60 distinguishes only between 'good status' and 'poor status'. Furthermore, in accordance with point 2.4.5 of Annex V to that directive, a deterioration found locally may be taken into account only if it affects the body of water concerned as a whole.

41 Having regard to the judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433), the referring court is of the opinion that a deterioration of the chemical status of a body of groundwater occurs in two situations: first, where at least one of the quality elements referred to in Annex V to Directive 2000/60 fails to meet one of the applicable parameters because of the project and, secondly, where the concentration of pollutants already exceeding a limit value in force increases further.

42 With regard to the limit values in force, the Bundesverwaltungsgericht (Federal Administrative Court) takes the view that reference should be had to Directive 2006/118, but that, in the present case, no deterioration of bodies of groundwater could be found.

43 Finally, the referring court considers that the obligations to prevent the deterioration and to enhance the status of bodies of water, referred to in Article 4(1) of Directive 2000/60, do not mean that all members of the public concerned by a project and who allege that their rights have been infringed are entitled to challenge a decision which fails to meet those obligations. Under the applicable German law, an action brought by an individual applicant is admissible only if that applicant invokes the infringement of provisions intended at least in part to protect his or her own rights.

44 Both the obligation to prevent deterioration of the status of bodies of water and the obligation to enhance those bodies of water must be complied with by the public authorities. However, those obligations do not, in German law, confer any subjective right on individuals who may be concerned by the impact that a project may have on the water. Those obligations establish water-management objectives and serve exclusively the public interest.

45 In that regard, it follows from the judgments of 15 October 2015, *Commission* v *Germany* (C-137/14, EU:C:2015:683), of 8 November 2016, *Lesoochranárske zoskupenie VLK* (C-243/15, EU:C:2016:838), and of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987), that it is sufficient that environmental protection associations have the opportunity to verify compliance with EU environmental legislation which serves the public interest. That view of the right to bring proceedings corresponds to that laid down in Article 11(1) of Directive 2011/92 and in Article 9(3) of the Aarhus Convention.

46 That being so, it is apparent from recitals 24 and 37 and from first indent of Article 1 of Directive 2000/60 that that directive protects water not only as a component of the ecosystem, but also as a drinking water supply for the population. Therefore, according to the referring court, the view must be taken that the obligations laid down in that directive contribute to protecting human health. In accordance with the case-law of the Court (judgments of 25 July 2008, *Janecek*, C-237/07, EU:C:2008:447; of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15,

EU:C:2016:838; and of 20 December 2017, *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation*, C-664/15, EU:C:2017:987), persons whose health is endangered by the infringement of mandatory provisions of a directive should be able to rely on those provisions before the competent national court.

47 In the light of those considerations, the referring court finds that it is conceivable that the claimants in the main proceedings who have a domestic well within the area covered by the project at issue may be able to plead an infringement of the prohibition of deterioration and of the obligation to enhance the status of bodies of water laid down in Directive 2000/60 in the case where their health may be endangered as a result of the failure to comply with those obligations.

48 In those circumstances, the Bundesverwaltungsgericht (Federal Administrative Court) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Must Article 11(1)(b) of Directive [2011/92] be interpreted as meaning that a provision of national law is consistent with it, according to which a claimant who is not recognised as an environmental association is entitled to apply for the annulment of a decision due to a procedural defect only if the procedural defect has denied the claimant himself the opportunity – as provided for by statute – of participating in the decision-making process?

(2) (a) Must Article 4(1)(a)(i) to (iii) of Directive [2000/60] be interpreted as meaning that it does not only include substantive criteria for examination but, in addition, specifications regarding the regulatory approval procedure?

(b) If Question (a) is answered in the affirmative: must the involvement of the public pursuant to Article 6 [of Directive 2011/92] always relate to the documents regarding the assessment under water law in the aforementioned sense, or is it permissible to differentiate with regard to the time of the creation of the document and its complexity?

(3) Must the term "deterioration of the status of a body of groundwater" in Article 4(1)(b)(i) [of Directive 2000/60] be interpreted as meaning that a deterioration of the chemical status of a body of groundwater exists as soon as at least one environmental quality standard for one parameter is exceeded for project-related reasons and that irrespective of that, if the relevant threshold for one pollutant has already been exceeded, any additional (measurable) increase of the concentration constitutes a deterioration?

(4) (a) Taking into account its binding nature (Article 288 TFEU) and the guarantee of effective legal protection (Article 19 TEU), must Article 4 [of Directive 2000/60] be interpreted as meaning that all members of the public concerned by a project who assert that the approval of a project breaches their rights are also entitled to bring judicial proceedings asserting breaches of the ban on the deterioration of water and the requirement for improvement?

(b) If Question (a) is answered in the negative – taking into account its objective – must Article 4 [of Directive 2000/60] be interpreted as meaning that at least such claimants who maintain domestic wells for their private water supply in geographical proximity to the planned road are entitled to bring judicial proceedings asserting breaches of the ban on the deterioration of water and the requirement for improvement?'

The questions referred for a preliminary ruling

The first question

49 By its first question, the referring court seeks to establish whether Article 11(1)(b) of Directive 2011/92 must be interpreted as meaning that it permits Member States to provide that an application for annulment of the decision authorising a project on the ground of a procedural defect is admissible only if the irregularity at issue has denied the claimant his or her right to participate in the environmental decision-making process guaranteed by Article 6 of that directive.

50 It follows from the order for reference that the project at issue, namely the construction of a section of motorway, was subject to an environmental impact assessment prior to its approval. In particular, it was likely to have an impact on the status of bodies of surface water and groundwater located within the boundaries of the project, inter alia because of rainwater drainage. However, before the contested decision was adopted, no documentation relating to the effects of the project on the water and compliance with the obligations arising, in particular, from Article 4 of Directive 2000/60 was made available to the public. According to the referring court, the approval of the project at issue is, therefore, vitiated by a procedural defect.

51 It is also clear from the order for reference that, during the consent procedure relating to the project at issue, the bodies of water concerned were monitored, but that this was not documented. The technical study on water drainage, which includes information concerning the examination of compliance with the obligations arising under Article 4(1) of Directive 2000/60, was not drawn up until after the project had been approved.

52 Moreover, the referring court notes that the project at issue complies with the obligation to prevent deterioration of the status of bodies of water, laid down in Article 4(1) of Directive 2000/60. In view of the minimal increase in chloride levels, which will remain below the applicable limit values, that project will probably not lead to a deterioration in water quality. Consequently, according to the referring court, it is clear that the procedural defect invoked by the claimants in the main proceedings had no impact on the tenor of the contested decision.

53 The first question referred to the Court must be answered on the basis of the latter premiss.

54 It should be recalled that, under Article 11(1) of Directive 2011/92, Member States are required to ensure that, in accordance with the relevant national legal system, members of the 'public concerned' either having a sufficient interest, or 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 in respect of decisions, acts or omissions subject to the public participation provisions of that directive in order to challenge their substantive or procedural legality.

55 Thus, the admissibility of an action may be conditional either on the existence of 'a sufficient interest in bringing the action', or on an applicant alleging 'the impairment of a right', depending on which of those conditions is adopted in the national legislation (see, to that effect, judgment of 16 April 2015, *Gruber*, C-570/13, EU:C:2015:231, paragraph 33).

56 Article 11(3) of Directive 2011/92 provides that Member States are to determine what constitutes a sufficient interest or impairment of a right, consistently with the objective of giving the public concerned wide access to justice.

57 In that regard, the Court has held that the national legislature is entitled to confine the rights the infringement of which may be relied on by an individual in legal proceedings contesting one of the decisions, acts or omissions referred to in Article 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), now Article 11 of Directive 2011/92, to individual public-law rights, that is to say, individual rights which, under national law, can be categorised as individual public-law rights (see, to that effect, judgments of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraph 45; of 16 April 2015, *Gruber*, C-570/13, EU:C:2015:231, paragraph 40; and of 15 October 2015, *Commission* v *Germany*, C-137/14, EU:C:2015:683, paragraph 33).

58 The Court has also held that, in the case where a procedural defect has no consequences that could possibly affect the purport of the contested decision, it cannot be regarded as impairing the rights of the party relying on it (see, to that effect, judgment of 7 November 2013, *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraph 49).

59 Thus, in view of the fact that Article 11 of Directive 2011/92 leaves the Member States significant discretion to determine what constitutes impairment of a right within the meaning of Article 11(1)(b) thereof, it is permissible for national law not to recognise such an impairment if it is established that it is conceivable, in view of the circumstances of the case, that the contested decision would not have been different without the procedural defect invoked (see, to that effect, judgment of 7 November 2013, *Gemeinde Altrip and Others*, C-72/12, EU:C:2013:712, paragraphs 50 and 51).

60 Therefore, national legislation which makes the admissibility of actions brought by individuals subject to the condition that they allege an impairment of a right and which, at the same time, allows individuals to invoke a procedural defect affecting the public's participation in the decision-making process, even though that defect has had no impact on the tenor of the decision at issue, enables an action to be brought also in cases where this is not required under Article 11(1)(b) of Directive 2011/92.

61 The national legislature is therefore entitled to make the admissibility of an action for annulment of the decision approving a project on the ground of a procedural defect, where that defect is not such as to alter the meaning of that decision, subject to the condition that it actually deprived the claimants of their right to participate in the decision-making process.

62 So far as is relevant, it should also be stated that, as is noted in the second indent of paragraph 90 of the present judgment, in the absence, in the file made available to the public, of the data that are necessary in order to assess the effects of a project on the water, the public is unable to participate effectively in the decision-making process.

63 In light of all of the foregoing considerations, the answer to the first question referred is that Article 11(1)(b) of Directive 2011/92 must be interpreted as permitting Member States to provide that, when a procedural defect vitiating the decision approving a project does not alter the meaning of that decision, an application for annulment of that decision is admissible only if the irregularity at issue has denied the claimant his or her right, guaranteed by Article 6 of that directive, to participate in the environmental decision-making process.

The second question

64 By its second question, the referring court seeks to ascertain whether Article 4(1)(a) of Directive 2000/60 must be interpreted as precluding a situation in which it is only after a project has been approved that the checks to establish whether the requirements laid down therein have been met are carried out.

65 As appropriate, the referring court also seeks to ascertain whether Article 6 of Directive 2011/92 must be interpreted as meaning that the information to be made available to the public during the procedure for approving a project must always include documents which contain an examination of that project in the light of the requirements laid down in Directive 2000/60.

66 With regard to the first part of the second question, it should be noted, as a preliminary point, that the referring court's questions concern not only the requirements laid down in Article 4(1)(a) of Directive 2000/60, in respect of surface waters, but also those laid down in Article 4(1)(b) of that directive, in respect of groundwater.

67 According to point (a) of the first paragraph of Article 1 of Directive 2000/60, the purpose of that directive is to establish a framework for the protection of inland surface waters, transitional waters, coastal waters and groundwater which prevents further deterioration and protects and enhances the status of aquatic ecosystems and terrestrial ecosystems directly depending on the aquatic ecosystems.

68 In that regard, it should be recalled that Article 4(1)(a) of Directive 2000/60 imposes two distinct, albeit intrinsically linked, objectives. First, in accordance with Article 4(1)(a)(i), Member States are required to implement the necessary measures to prevent deterioration of the status of all bodies of surface water (obligation to prevent deterioration). Secondly, pursuant to Article 4(1)(a)(ii) and (iii), Member States are required to protect, enhance and restore all bodies of surface water with the aim of achieving 'good status' by the end of 2015 at the latest (obligation to enhance) (judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 39).

69 Article 4(1)(b) of Directive 2000/60 imposes, in respect of groundwater, obligations which are largely identical to those laid down in respect of surface waters. First, in accordance with Article 4(1)(b)(i), Member States are required to implement the measures necessary to prevent deterioration of the status of all bodies of groundwater (obligation to prevent deterioration). Secondly, pursuant to Article 4(1)(b)(ii), Member States are required to protect, enhance and restore all bodies of groundwater with the aim of achieving 'good status' by the end of 2015 at the latest (obligation to enhance).

70 Therefore, as the Advocate General noted in point 56 of his Opinion, the objectives of Directive 2000/60 for surface waters and for groundwater are similar.

71 In that regard, it should be recalled that the objective of Directive 2000/60 is to achieve, by coordinated action, 'good status' for all EU surface waters and groundwater by 2015. Both the obligation to enhance and the obligation to prevent deterioration of the status of bodies of water are designed to attain that qualitative objective (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraphs 37, 38 and 41).

72 Moreover, it follows from the wording, scheme and purpose of Article 4 of Directive 2000/60 that, like the requirements laid down in Article 4(1)(a) in respect of surface waters, which, as the Court noted in the judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 43), are binding in nature, those laid down in Article 4(1)(b) in respect of groundwater are also binding.

73 It follows that Article 4(1) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but has binding effects, once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive.

74 Article 4 of Directive 2000/60 not only contains more long-term planning requirements provided for by management plans and programmes of measures, but also concerns specific projects to which the prohibition of deterioration of the status of bodies of water also applies. A Member State is consequently required to refuse authorisation for a project where it is such as to result in deterioration of the status of the body of water concerned or to jeopardise the attainment of 'good status' for bodies of surface water or groundwater, subject to the derogations also provided for in Article 4 (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraphs 47, 48 and 50).

75 More specifically, as the Court has held, when a project is liable to have adverse effects on water, consent may be given to it only if the conditions set out in Article 4(7)(a) to (d) of that directive are satisfied. Without prejudice to the possibility of judicial review, the national authorities which are competent to authorise a project are required to review whether those conditions are satisfied before the grant of such an authorisation (see, to that effect, judgment of 1 June 2017, *Folk*, C-529/15, EU:C:2017:419, paragraphs 36 and 39).

76 It follows from the foregoing that, during the procedure for approval of a project, and therefore before the decision is taken, the competent authorities are required, under Article 4 of Directive 2000/60, to check whether that project may have adverse effects on water which would be contrary to the requirements to prevent deterioration and to improve the status of bodies of surface water and groundwater. That provision therefore precludes such a check from taking place only after that time.

77 With regard to the second part of the second question, concerning the information to be made available to the public before a project is approved, it should be recalled that Article 2(1) of Directive 2011/92 requires that projects likely to have significant effects on the environment, referred to in Article 4 of that directive, read in conjunction with Annexes I or II thereto, must be subject to an environmental impact assessment before consent is granted (judgment of 28 February 2018, *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 24).

78 The requirement for such an assessment to be carried out as a preliminary step is justified by the fact that it is necessary for the competent authority to take into account effects on the environment at the earliest possible stage in all the technical planning and decision-making processes, the objective being to prevent the creation of pollution or nuisances at source rather than subsequently trying to counteract their effects (judgment of 28 February 2018, *Comune di Castelbellino*, C-117/17, EU:C:2018:129, paragraph 25).

79 Article 3 of Directive 2011/92 lists the factors that must be taken into account during the assessment of the effects of a project on the environment. In accordance with Article 3(b) of that directive, it is necessary to identify, describe and assess, in an appropriate manner, the direct and indirect effects of a project on soil, water, air, climate and the landscape.

80 The information that the developer must, in any event, provide to the decision-making authority includes, in accordance with Article 5(3)(b) and (c) of Directive 2011/92, a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects and the data required to identify and assess the main effects which the project is likely to have on the environment.

81 Therefore, in the light of Article 3(b) of Directive 2011/92 and in view of the mandatory nature of the check to be carried out pursuant to Directive 2000/60, recalled in paragraphs 74 to 76 of the present judgment, and in view of the importance which that directive attaches to the protection of waters, it must be held that the information referred to in Article 5(3)(b) and (c) of Directive 2011/92 must contain the data that are necessary in order to assess the effects of a project on the status of the bodies of water concerned in the light of the criteria and requirements laid down in, inter alia, Article 4(1) of Directive 2000/60.

82 Moreover, it follows from Article 5(1) of Directive 2011/92 that Member States must adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV to that directive, inasmuch as that information is relevant in order to assess the effects of a given project, and within the limits of what may reasonably be required of a private operator. In accordance with paragraph 4 of that annex, that information includes a description of the direct, indirect, secondary, cumulative, short-, medium- and long-term, permanent and temporary, positive and negative effects of the project resulting from, inter alia, the use of natural resources and the emission of pollutants.

83 All information gathered in that regard must, in accordance with Article 6(3) of Directive 2011/92, be made available to the public concerned within reasonable time frames.

84 In the light of the foregoing considerations, it must be concluded that, under Directive 2011/92 and, in particular, Articles 3, 5 and 6 thereof, the information made available to the public for consultation purposes before a project is approved must include the data that are necessary in order to assess the effects of that project on water, in the light of the criteria and requirements laid down in, inter alia, Article 4(1) of Directive 2000/60.

85 Furthermore, although it cannot be inferred from Articles 5 and 6 of Directive 2011/92 that the data making it possible to assess the effects of a project on water must necessarily be contained in a single document, such as a report or a technical study, Article 6(4) and (6) of that directive stipulates that the public concerned must be given an effective opportunity to participate in the decision-making process and to prepare accordingly.

86 Therefore, the documents in the file that are made available to the relevant public must make it possible for that public to obtain an accurate impression of the impact that the project at issue will have on the status of the bodies of water concerned in order for it to be able to verify compliance with the obligations arising from, inter alia, Article 4 of Directive 2000/60. In particular, the data provided must be such as to show whether, having regard to the criteria established by that directive, the project at issue is liable to result in a deterioration of a body of water.

87 In any event, an incomplete file or data that are scattered, incoherently, across a multitude of documents are not such as to make it possible for the public concerned to participate effectively in the decision-making process and, therefore, do not satisfy the requirements stemming from Article 6 of Directive 2011/92.

88 Furthermore, in accordance with Article 5(3)(e) of that directive, it is for the developer to draw up a 'non-technical summary' of the information referred to in points (a) to (d) of paragraph 3 of that article, which includes the data required to identify and assess the main effects which the project is likely to have on the environment. Under Article 6(3)(a) of that directive, that summary must also be made available to the public.

89 In the present case, it is for the referring court to verify whether the file to which the public had access before the project at issue was approved satisfies all of the requirements stemming from Article 6(3) of Directive 2011/92, read in conjunction with Article 5(1) and (3) of that directive, as specified in the present judgment.

90 In the light of all of the foregoing considerations, the answer to the second question referred must be that:

– Article 4 of Directive 2000/60 must be interpreted as precluding a situation in which it is only after a project has been approved that the competent authority carries out the checks to establish whether the requirements laid down in that framework have been met, including the requirement to prevent deterioration of the status of bodies of water, both surface water and groundwater, which are affected by the project, and

– Article 6 of Directive 2011/92 must be interpreted as meaning that the information to be made available to the public during the procedure for approving a project must include the data that are necessary in order to assess the effects of that project on water, in the light of the criteria and requirements laid down in, inter alia, Article 4(1) of Directive 2000/60.

The third question

91 By its third question, the referring court seeks to ascertain whether Article 4(1)(b)(i) of Directive 2000/60 must be interpreted as meaning that the exceedance of a parameter of at least one of the environmental quality standards must be regarded as a deterioration of the chemical status of a body of groundwater as a result of a project. It also wishes to ascertain whether a foreseeable increase in the concentration of a pollutant when the threshold set for that pollutant has already been exceeded must be regarded as constituting such a deterioration.

92 It should be recalled that, in its judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland* (C-461/13, EU:C:2015:433, paragraph 70), the Court held that the concept of 'deterioration of the status' of a body of surface water, referred to in Article 4(1)(a)(i) of Directive 2000/60, must be interpreted as meaning that there is deterioration as soon as the status of at least one of the quality elements, referred to in Annex V to that directive, falls by one class, even if that fall does not result in a fall in classification of the body of water in question as a whole. However, if the quality element concerned is already in the lowest class, any deterioration of that element constitutes a 'deterioration of the status' of a body of surface water, within the meaning of that provision.

93 As the Advocate General noted in point 55 of his Opinion, it is true that, unlike bodies of surface water – for which Directive 2000/60 provides a scale of five ecological status classes – that directive distinguishes only between 'good status' and 'poor status' with regard to the quantitative and chemical status of bodies of groundwater. It follows from Article 2(25) and (28) of that directive that that classification is made using the tables in points 2.1.2 and 2.3.2 of Annex V thereto.

94 However, it should be noted that, despite those differences in the method for determining the status of bodies of water, depending on whether they are surface water or groundwater, the same principles determine the scope of the concept of 'deterioration of the status' of water, irrespective of the type of water concerned.

95 It has been stated in paragraphs 68 to 72 of the present judgment that the objectives of Directive 2000/60, in respect of both surface water and groundwater, and the obligations deriving from Article 4(1) of that directive for those types of water are largely identical.

96 In particular, this is the case in respect of the obligation to prevent deterioration of the status of bodies of water, provided for in Article 4(1)(a)(i) of that directive in the case of surface water and in Article 4(1)(b)(i) in the case of groundwater. Those two provisions contain no reference to the classification laid down for those types of water in Annex V to that directive, and therefore the concept of 'deterioration of the status' of waters is a concept of general scope (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 61).

97 Moreover, the Court has held that, although the classes provided for in Annex V to Directive 2000/60 were decisive for determining whether there is a deterioration, after a body of surface water has been classified in the lowest class, further deterioration of the status of that body of water would legally no longer be possible. However, given the very purpose of Directive 2000/60, bodies of water which have a poor status merit particular attention in the context of water management (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 63).

98 The same reasoning applies *mutatis mutandis* to groundwater.

99 In that context, account should also be taken of Article 4(5)(c) of Directive 2000/60, which expressly lays down a prohibition of all further deterioration as regards heavily modified bodies of surface water and groundwater for which Member States may aim to achieve less stringent environmental objectives (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 64).

100 In the light of those factors, the concept of 'deterioration of the status' of bodies of water must be interpreted by reference to both a quality element and a substance. Thus, the obligation to prevent deterioration of the status of a body of water retains all its practical effect, on condition that it encompasses all changes liable to undermine achievement of the principal objective of Directive 2000/60 (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 66).

101 Furthermore, as regards the criteria for concluding that there is a deterioration of the status of a body of water, it should be noted that it is clear from the scheme of Article 4 of Directive 2000/60, in particular Article 4(6) and (7), that a deterioration of the status of a body of water,

even if transitory, is authorised only subject to strict conditions. It follows that the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be as low as possible (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 67).

102 As regards, specifically, the examination of the chemical status of bodies of groundwater, it is clear from point 2.3.1 of Annex V to Directive 2000/60 that water conductivity and the concentration of pollutants are the relevant parameters. The table in point 2.3.2 of that annex sets out for each of those parameters the quality elements that must be taken into account in order to determine whether the chemical status of a body of water is 'good' or 'poor'.

103 First, in respect of the concentration of pollutants, that examination is based on three quality elements. In the first place, the concentrations of pollutants do not exhibit the effects of saline or other intrusions. In the second place, those concentrations do not exceed the quality standards applicable under other relevant legislation in accordance with Article 17 of Directive 2000/60. In the third place, and lastly, the concentrations of pollutants in the groundwater do not prevent attainment of the environmental objectives specified under Article 4 of that directive for associated surface waters, nor do they result in any significant diminution of the ecological or chemical quality of such bodies or cause any significant damage to terrestrial ecosystems which depend directly on the groundwater body.

104 Secondly, in respect of conductivity, the only requirement is that changes in conductivity are not indicative of saline or other intrusion into the groundwater body.

105 In so far as point 2.3.2 of Annex V to Directive 2000/60 refers to quality standards applicable under other relevant legislation in accordance with Article 17 of that directive, it should be noted that Article 17 provides for the adoption, by the EU legislature, of specific measures to prevent and control groundwater pollution which include, inter alia, criteria for assessing good groundwater chemical status, in accordance with point 2.2 of Annex II and points 2.3.2 and 2.4.5 of Annex V to that directive. On that basis, the EU legislature adopted Directive 2006/118.

106 Article 3(1) of Directive 2006/118 provides that, for the purposes of the assessment of the chemical status of a body of groundwater, Member States are required to use, first, the groundwater quality standards in the list in Annex I to that directive and, secondly, the threshold values to be established by Member States in accordance with Annex II to that directive, in particular for the pollutants which, within the territory of a Member State, have been identified as contributing to the characterisation of bodies of groundwater as being at risk.

107 Consequently, those quality standards and threshold values constitute a quality element for the purposes of point 2.3.2 of Annex V to Directive 2000/60 which makes it possible to assess one of the parameters for determining the classification of the status of a body of groundwater, namely the concentration of pollutants.

108 Given that, as noted in paragraph 100 of the present judgment, the concept of 'deterioration of the status' of bodies of water must be interpreted by reference to a quality element or substance and, as is clear from paragraph 101 of the present judgment, the threshold beyond which breach of the obligation to prevent deterioration of the status of a body of water is found must be as low as possible, it must be held that the failure to observe one of the quality elements referred to in point 2.3.2 of Annex V to Directive 2000/60 constitutes a deterioration of the chemical status of the body of groundwater concerned.

109 In particular, the exceedance, in a body of groundwater, of a single one of the quality standards or threshold values, within the meaning of Article 3(1) of Directive 2006/118, must be classified as amounting to an infringement of the obligation to prevent the deterioration of the status of a body of groundwater.

110 Moreover, for the same reasons as those set out in paragraph 108 of the present judgment and in the light of, inter alia, the considerations noted in paragraph 97 thereof, any subsequent increase in the concentration of a pollutant that, with reference to Article 3(1) of Directive 2006/118, already exceeds an environmental quality standard or a threshold value set by the Member State also constitutes a deterioration.

111 Furthermore, in order to answer the referring court's questions in respect of the consideration of changes in the concentration of pollutants found locally in order to determine whether there is a deterioration of the chemical status of a body of water, it should be noted that point 2.4 of Annex V to Directive 2000/60 establishes the main criteria for the monitoring of groundwater chemical status. Point 2.4.5 of that annex, which is expressly mentioned by the referring court, sets out requirements relating to interpretation and presentation.

112 Admittedly, although the latter provision stipulates that the classification of the chemical status of a body of groundwater as 'good' or 'poor' must be made by aggregating the results of the individual monitoring points within a body of water, this does not mean that, in order to find that there has been a deterioration of that status, the whole of the body of groundwater must be affected.

113 In particular, it is clear from the role and the importance of each monitoring site in the system for monitoring groundwater quality established by Directive 2000/60, in particular in point 2.4 of Annex V, that the failure to comply with one quality element at a single monitoring point is sufficient for a finding that there is a deterioration of the status of a body of groundwater for the purposes of Article 4(1) of that directive.

114 In accordance with point 2.4 of Annex V to that directive, the location of monitoring points must provide a coherent and comprehensive overview of groundwater chemical status within each river basin. To that end, that provision lays down various criteria in respect of the selection of monitoring sites which, as confirmed by Article 4(3) of Directive 2006/118, must provide representative monitoring data.

115 Thus, the failure to comply with one quality element at a single monitoring point indicates the existence, for the purposes of Article 4(1)(b)(i) of Directive 2000/60, of a deterioration of the chemical status of at least a significant part of a body of groundwater.

116 Moreover, it is admittedly possible that, despite the exceedance of a groundwater quality standard or of a threshold value at one or more monitoring points, a body of groundwater may be regarded as being of good chemical status in accordance with Article 4(2)(c) of Directive 2006/118. However, in that event, under Article 4(5) of that directive, Member States are, in accordance with Article 11 of Directive 2000/60, required to take such measures as may be necessary to protect aquatic ecosystems, terrestrial ecosystems and human uses of groundwater dependent on the part of the body of groundwater affected by that exceedance.

117 The measures referred to in Article 11 of Directive 2000/60 include the establishment of programmes in order to achieve the objectives established under Article 4 of that directive.

118 Therefore, where a quality element is not observed at a single monitoring point in a body of groundwater, it must be found that there is a deterioration of the chemical status of that body of water, for the purposes of Article 4(1)(b)(i) of Directive 2000/60.

119 In the light of all of the foregoing considerations, the answer to the third question referred is that Article 4(1)(b)(i) of Directive 2000/60 must be interpreted as meaning that, first, the exceedance of at least one of the quality standards or threshold values referred to in Article 3(1) of Directive 2006/118 and, secondly, a foreseeable increase in the concentration of a pollutant when the threshold set for that pollutant has already been exceeded must be regarded as a deterioration of the chemical status of a body of groundwater as a result of a project. The values measured at each monitoring point must be taken into account individually.

The fourth question

120 By its fourth question, the referring court seeks to establish, in essence, whether Article 4(1) of Directive 2000/60, read in the light of Article 19 TEU and Article 288 TFEU, must be interpreted as meaning that the members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water and to improve the status of those bodies of water.

121 In that regard, it should be noted that, according to settled case-law of the Court, it would be incompatible with the binding effect conferred by Article 288 TFEU on a directive to exclude, in principle, the possibility that the obligations which it imposes may be relied on by the persons concerned (judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 30 and the case-law cited).

122 In particular, where the EU legislature has, by directive, imposed on Member States the obligation to pursue a particular course of action, the effectiveness of such action would be weakened if individuals were prevented from relying on it before their national courts, and if the latter were prevented from taking it into consideration as an element of EU law in deciding whether the national legislature, in exercising the choice open to it as to the form and methods for implementation, has kept within the limits of its discretion set out therein (judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 31 and the case-law cited).

123 The Court inferred from this that at least the natural or legal persons directly concerned by an infringement of provisions of an environmental directive must be in a position to require the competent authorities to observe such obligations, if necessary by pursuing their claims by judicial process (see, to that effect, judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 32).

124 In that regard, the referring court states that, in the context of their action, some of the claimants in the main proceedings take the view that the project at issue is likely to result in the deterioration of the status of the body of groundwater which feeds their domestic wells from which they obtain drinking water. However, neither the information contained in the order for reference nor the observations submitted to the Court are capable of establishing the relevance, for the claimants in the main proceedings, of the bodies of surface water that may also be affected by the project at issue. In those circumstances, it does not appear that the claimants in the main proceedings can be

concerned by a possible infringement of obligations deriving from Article 4(1)(a) of Directive 2000/60, with the result that the Court's examination will concern only Article 4(1)(b), regarding groundwater.

125 In order to determine whether persons, such as the claimants in the main proceedings, are directly concerned by an infringement of the obligations provided for in Article 4(1)(b) of Directive 2000/60, account must be taken of the purpose of that directive and of the content of that provision, the proper application of which is sought before the referring court (see, to that effect, judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 35).

126 In that regard, it is clear from paragraph 71 of the present judgment that the objective of Directive 2000/60 is to achieve, by coordinated action, 'good status' for all EU surface waters and groundwater by 2015. Both the obligation to enhance and the obligation to prevent deterioration of the status of bodies of water are designed to attain that qualitative objective.

127 As is clear from the first indent of the second paragraph of Article 1 of Directive 2000/60, that objective contributes, as regards groundwater specifically, to the provision of a sufficient supply of good quality surface water and groundwater as needed for sustainable, balanced and equitable water use.

128 Accordingly, it must be held that, by its objective and the obligations laid down in Article 4(1)(b) in order to attain that objective, Directive 2000/60 also pursues the specific objective of protecting groundwater as a resource for human use.

129 That interpretation of the objectives of Directive 2000/60 is confirmed by point (d) of the first paragraph of Article 1 and by the second indent of the second paragraph of Article 1, read in conjunction with Article 2(33) of that directive.

130 It is clear from point (d) of the first paragraph and the second indent of the second paragraph of Article 1 that the regulatory framework established by that directive is intended to achieve a progressive and significant reduction of groundwater pollution and to prevent further pollution. In accordance with Article 2(33), water pollution arises from any introduction of substances into the water which may be harmful to human health or to the quality of aquatic ecosystems, in such a way that there is interference with the amenities of the environment and, more specifically, water or its legitimate use.

131 It therefore follows from point (d) of the first paragraph and the second indent of the second paragraph of Article 1 of Directive 2000/60, read in conjunction with Article 2(33) thereof, that the purpose of reducing and preventing pollution is, inter alia, to allow the legitimate use of groundwater.

132 A person who has the right to draw and use groundwater is using that groundwater legitimately. That person is, therefore, directly concerned by the infringement of the obligations to enhance and to prevent the deterioration of the status of bodies of groundwater that supply his or her source since that infringement is capable of interfering with its use (see, by analogy, judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraphs 40 and 42).

133 In view of the variety of uses of groundwater referred to in the first indent of the second paragraph of Article 1 and in Article 2(33) of Directive 2000/60, the fact that the exceedance of just one of the quality standards or threshold values, within the meaning of Article 3(1) of Directive 2006/118, does not, as such, involve a danger to the health of the persons wishing to bring an action is not capable of calling that conclusion into question (see, by analogy, judgment of 3 October 2019, *Wasserleitungsverband Nördliches Burgenland and Others*, C-197/18, EU:C:2019:824, paragraph 41).

134 Therefore, since the claimants in the main proceedings lawfully use the groundwater in question, they are directly concerned by the infringement of those obligations.

135 In the light of all of the foregoing considerations, the answer to the fourth question referred is that point (b) of the first paragraph of Article 1 of Directive 2000/60 and the first indent of the second paragraph of Article 1 of that directive, together with Article 4(1)(b) thereof, read in the light of Article 19 TEU and Article 288 TFEU, must be interpreted as meaning that the members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water and to improve the status of those bodies of water, if that breach concerns them directly.

Costs

136 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 (First Chamber) hereby rules:

1. **Article 11(1)(b) 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 must be interpreted as permitting Member States to provide that, when a procedural defect vitiating the decision approving a project does not alter the meaning of that decision, an application for annulment of that decision is admissible only if the irregularity at issue has denied the claimant his or her right, guaranteed by Article 6 of that directive, to participate in the environmental decision-making process.**

2. **Article 4 of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as precluding a situation in which it is only after a project has been approved that the competent authority carries out the checks to establish whether the requirements laid down in that framework have been met, including the requirement to prevent deterioration of the status of bodies of water, both surface water and groundwater, which are affected by the project.**

   Article 6 of Directive 2011/92 must be interpreted as meaning that the information to be made available to the public during the procedure for approving a project must include the data that are necessary in order to assess the effects of that project on water, in the light of the criteria and requirements laid down in, inter alia, Article 4(1) of Directive 2000/60.

3. **Article 4(1)(b)(i) of Directive 2000/60 must be interpreted as meaning that, first, the exceedance of at least one of the quality standards or threshold values referred to in Article 3(1) of Directive 2006/118/EC of the European Parliament and of the Council of 12 December 2006 on the protection of groundwater against pollution and deterioration and, secondly, a foreseeable increase in the concentration of a pollutant when the threshold set for that pollutant has already been exceeded must be regarded as a deterioration of the chemical status of a body of groundwater as a result of a project. The values measured at each monitoring point must be taken into account individually.**

4. **Point (b) of the first paragraph of Article 1 of Directive 2000/60 and the first indent of the second paragraph of Article 1 of that directive, together with Article 4(1)(b) thereof, read in the light of Article 19 TEU and Article 288 TFEU, must be interpreted as meaning that the members of the public concerned by a project must be able to assert, before the competent national courts, that there has been a breach of the requirements to prevent the deterioration of bodies of water and to improve the status of those bodies of water, if that breach concerns them directly.**

[Signatures]