

Provisional text

JUDGMENT OF THE COURT (Second Chamber)

20 December 2017 (*)

(Reference for a preliminary ruling — Environment — Directive 2000/60/EC — EU action in the field of water policy — Article 4(1) and Article 14(1) — Obligations to prevent deterioration of the status of bodies of surface water and encourage the active involvement of all interested parties in the implementation of the directive — Aarhus Convention — Public participation in decision-making and access to justice in environmental matters — Article 6 and Article 9(3) and (4) — Charter of Fundamental Rights of the European Union — Article 47 — Right to effective judicial protection — Project that is likely to have an impact on water status — Administrative procedure for a permit — Environmental organisation — Application seeking to secure status as a party to the administrative procedure — Possibility of relying on rights deriving from Directive 2000/60/EC — Extinction of the status of party to the procedure and of the right to bring an action if those rights are not exercised within good time during the administrative procedure)

In Case C-664/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Verwaltungsgerichtshof (Supreme Administrative Court, Austria), made by decision of 26 November 2015, received at the Court on 14 December 2015, in the proceedings

Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation

v

Bezirkshauptmannschaft Gmünd

THE COURT (Second Chamber),

composed of M. Ilešič, President of the Chamber, A. Rosas, C. Toader, A. Prechal (Rapporteur) and E. Jarašiūnas, Judges,

Advocate General: E. Sharpston,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 15 March 2017,

after considering the observations submitted on behalf of:

- Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation, by L.E. Riegler, Rechtsanwalt,
- the Austrian Government, by C. Pesendorfer and C. Vogl, acting as Agents,
- the Netherlands Government, by M. Bulterman and M. de Ree, acting as Agents,
- the European Commission, by L. Pignataro-Nolin, C. Hermes and E. Manhaeve, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 12 October 2017,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of 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 (OJ 2000 L 327, p. 1), or of that directive as a whole, and of Article 9(3) of 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').
- 2 The request has been made in proceedings between Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation (Protect Environmental Organisation Defending Nature, Species and the Countryside, Austria) ('Protect') and Bezirkshauptmannschaft Gmünd (Gmünd district authority, Austria) concerning Protect's application seeking to secure status as a party to the procedure relating to a request by Aichelberglift Karlstein GmbH for the extension of a permit for a snow-making facility granted pursuant to legislation governing water-related matters.

Legal context

International law

- 3 The 18th recital of the Aarhus Convention states:

'Concerned that effective judicial mechanisms should be accessible to the public, including organisations, so that its legitimate interests are protected and the law is enforced.'
- 4 Article 2 of the Aarhus Convention, headed 'Definitions', states in paragraphs 4 and 5:

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

5. "The public concerned" means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organisations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.'
- 5 Article 6 of the Aarhus Convention, headed 'Public participation in decisions on specific activities', provides:

'1. Each Party:

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

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

...

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

...

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

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

5. Each Party should, where appropriate, encourage prospective applicants to identify the public concerned, to enter into discussions, and to provide information regarding the objectives of their application before applying for a permit.

6. Each Party shall require the competent public authorities to give the public concerned access for examination, upon request where so required under national law, free of charge and as soon as it becomes available, to all information relevant to the decision-making referred to in this article that is available at the time of the public participation procedure, without prejudice to the right of Parties to refuse to disclose certain information in accordance with article 4, paragraphs 3 and 4. ...

...

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

...'

6 Article 9 of that same convention, headed 'Access to justice', provides in paragraphs 2 to 4:

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

(a) Having a sufficient interest or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

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

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 2, paragraph 5, shall be deemed sufficient for the purpose of subparagraph (a) above. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.

...

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

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

EU law

Directive 92/43

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

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

Directive 2000/60

- 8 Recitals 11, 19, 27 and 46 of Directive 2000/60 state:

‘(11) As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the precautionary principle and on the principles that preventive action should be taken, environmental damage should, as a priority, be rectified at source and that the polluter should pay.

...

(19) This directive aims at maintaining and improving the aquatic environment in the Community. This purpose is primarily concerned with the quality of the waters concerned. ...

...

(27) The ultimate aim of this Directive is to achieve the elimination of priority hazardous substances and contribute to achieving concentrations in the marine environment near background values for naturally occurring substances.

...

(46) To ensure the participation of the general public including users of water in the establishment and updating of river basin management plans, it is necessary to provide proper information of planned measures and to report on progress with their implementation with a view to the involvement of the general public before final decisions on the necessary measures are adopted.’

9 Article 1 of Directive 2000/60, headed ‘Purpose’, provides:

‘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;
- (c) aims at enhanced protection and improvement of the aquatic environment, inter alia, through specific measures for the progressive reduction of discharges, emissions and losses of priority substances and the cessation or phasing-out of discharges, emissions and losses of the priority hazardous substances;

...’

10 Article 4 of that directive, ‘Environmental objectives’, provides in paragraph 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;

...’

11 Article 14 of Directive 2000/60, headed ‘Public information and consultation’, states:

‘1. Member States shall encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river

basin management plans. Member States shall ensure that, for each river basin district, they publish and make available for comments to the public, including users:

...

2. Member States shall allow at least six months to comment in writing on those documents in order to allow active involvement and consultation.

...’

Austrian law

12 The Allgemeines Verwaltungsverfahrensgesetz (General law on administrative procedure), in the version applicable to the dispute in the main proceedings (‘the AVG’), states in Paragraph 8 that:

‘Persons who avail themselves of an activity of the authority or to whom the activity of the authority relates shall be interested parties and, in so far as they are interested by virtue of a legal entitlement or a legal interest, they shall be parties to the proceedings.’

13 Paragraph 41 of the AVG provides:

‘(1) The calling of a hearing shall be personally notified to known stakeholders. If other persons may also be possible stakeholders, notice of the hearing shall be given, in addition, on the official notice board of the municipality, by means of an announcement in the newspaper designated for official notices by the authority or by means of an announcement in the electronic official journal of the authority.

(2) ... The notification (notice) of the calling of the hearing shall contain the information prescribed for writs of summons, including information on the possible consequences under Paragraph 42. ...’

14 Under Paragraph 42(1) of the AVG:

‘If notice of a hearing has been given pursuant to the second sentence of Paragraph 41(1) and, where applicable, in a special form provided for in the administrative rules, the consequence shall be that a person loses their status as a party if they do not submit objections with the authority during business hours no later than the day before the beginning of the hearing or during the hearing. If no provision is made in the applicable administrative rules regarding the form in which notice is given, the legal consequence described in the first sentence shall occur if notice of the hearing has been given pursuant to the second sentence of Paragraph 41(1) in due form.’

15 Paragraph 102 of the Wasserrechtsgesetz (Law relating to water), in the version thereof applicable to the dispute in the main action (‘the WRG’), reads as follows:

‘(1) The following shall be parties:

(a) the applicant;

(b) those with performance, acquiescence or abstention obligations, or whose rights ... are otherwise affected, those with fishing rights ... or rights of use ... as well as persons raising a dispute;

...

(2) Interested parties for the purposes of Paragraph 8 of [the AVG] shall, in particular, be those

— according to the subject of the hearing at issue and in so far as they have not already been accorded the status of party pursuant to [Paragraph 102(1)] — with an interest in public use, those with rights *in rem* in respect of affected real estate, all potential beneficiaries of the preservation or abandonment of a facility or of the extinction of a right over water and, for the purposes of opposition proceedings to projects ... all persons who should be considered as parties ([Paragraph 102(1)]) when those projects are realised.

(3) Interested parties are entitled to explain their interests during the proceedings, but shall not have the right to submit objections.

...?

16 According to Paragraph 145(b)(6) of the WRG, that federal law seeks to transpose Directive 2000/60.

17 The Umweltverträglichkeitsprüfungsgesetz 2000 (Law on environmental impact assessment of 2000, BGBl. 697/1993) in the version applicable to the dispute in the main proceedings ('the UVP-G 2000'), seeks to transpose into Austrian law 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).

18 Under Paragraph 19(7) of the UVP-G 2000 an environmental organisation that meets the conditions set out in Paragraph 19(6) may ask to be accorded the status of party in order to exercise the rights enjoyed by those with that status in proceedings relating to projects to be carried out in certain *Länder*.

19 In accordance with Paragraph 19(10) of the UVP-G 2000, environmental organisations that have been accorded that status may demand that environmental protection provisions be complied with in those proceedings, including the bringing of legal proceedings, to the extent that they have submitted their objections in writing during the administrative procedure, in particular during the period when the documents are available for inspection by the public, as referred to in Paragraph 9(1) of the UVP-G 2000, which must last at least six months.

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

20 Pursuant to the WRG, Aichelberglift Karlstein made an application for the extension of a permit for a snow-production facility belonging to a ski resort that includes a reservoir fed by water from the Einsiedlbach, a river located in Austria.

21 In the context of that administrative procedure, Protect, an environmental organisation recognised in accordance with Paragraph 19(7) of the UVP-G 2000, asked to be accorded the status of party and submitted objections to the granting of that permit on the basis of Article 9(3) of the Aarhus Convention and Article 6(3) of Directive 92/43.

22 It claimed, on the basis of certain studies, that the project at issue would have a significant impact on areas protected under Directive 92/43, in particular due to the noise of the snow-production facility, and that it would cause considerable harm to certain species present in those areas, including numerous protected bird species whose habitats are already threatened by the existing facility; it has indeed already led to the disappearance of several of those species from those areas.

23 Following the hearing for the permit application that occurred on 4 July 2013 under the conditions set out in Paragraphs 41 and 42 of the AVG, by decision of 4 November 2013, the Gmünd district authority granted the permit applied for by Aichelberglift Karlstein.

- 24 That authority rejected Protect's request and objections on the ground that it had not claimed that any rights protected under the legislation governing water-related matters had been affected, and, for that reason, it could not claim to be a party in the procedure.
- 25 The decision of 4 November 2013 refers to an earlier decision by which the authority responsible for environmental protection considered, on the basis of a report including an evaluation of the potential impact of the project at issue on areas protected under Directive 92/43, that it was not necessary to refuse to grant a permit for that project under the rules on environmental protection.
- 26 Protect then brought an action against the decision of 4 November 2013, alleging an infringement of Article 9(3) of the Aarhus Convention and the provisions of Directive 2000/60, claiming that, in particular, that directive requires that the good ecological status of water be preserved but that it was already evident that the ecological status of the relevant water had deteriorated as a result of the existing snow-production facility.
- 27 By judgment of 30 January 2015, the Landesverwaltungsgericht Niederösterreich (Lower Austria Regional Administrative Court, Austria) dismissed Protect's action on the ground that it had lost its status as a party to the procedure pursuant to Paragraph 42 of the AVG because it had failed to invoke rights protected under the legislation governing water-related matters during administrative procedure and, at the latest, during the hearing, and, in addition, the Aarhus Convention is not directly applicable under national law.
- 28 Protect then brought an application for a review on a point of law before the referring court, arguing that, pursuant to Article 2(4) and (5) and Article 9(3) of the Aarhus Convention, it had status as a party to the procedure carried out under the rules on water-related matters and had a legal interest in ensuring that provisions of EU law relating to environmental protection were complied with, including, in particular, those of Directive 2000/60, which the project at issue in the main proceedings infringed to a considerable degree.
- 29 In those circumstances, the Verwaltungsgerichtshof (Supreme Administrative Court, Austria) decided to stay proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Article 4 of Directive 2000/60 ... or that directive as a whole confer on an environmental organisation, in a procedure which is not subject to an environmental impact assessment under Directive 2011/92 ..., rights for the protection of which it has access to administrative or judicial procedures under Article 9(3) of the [Aarhus Convention]?’

If question 1 is answered in the affirmative:

- (2) Is it necessary under the provisions of the Aarhus Convention to be able to assert those rights at the stage of the procedure before the administrative authority or is the possibility of being granted judicial protection against the decision of the administrative authority sufficient?
- (3) Is it permissible for national procedural law (Paragraph 42 of the AVG) to require the environmental organisation — like other parties — to submit its objections not only in an appeal to the administrative court, but in good time at the stage of the procedure before the administrative authorities, failing which it loses its status as a party and is also no longer able to bring an appeal at the administrative court?’

Consideration of the questions referred

The first question

- 30 By its first question, the referring court asks, in essence, whether Article 4 of Directive 2000/60 or that directive as a whole must be interpreted as meaning that, under Article 9(3) of the Aarhus Convention, an environmental organisation must be able to contest before a court a decision on a permit that is governed exclusively by the legislation governing water-related matters in respect of a project that is not subject to an environmental impact assessment under Directive 2011/92.
- 31 The Court has already held that Article 4(1)(a)(i) to (iii) of Directive 2000/60 must be interpreted as meaning that Member States are required — unless a derogation is granted — to refuse to grant a permit for an individual project where it may cause a deterioration of the status of a body of surface water or where it jeopardises the attainment of good surface water status or of good ecological potential and good surface water chemical status by the date laid down by the directive (judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 51).
- 32 In that context, the Court held that Article 4(1)(a) of Directive 2000/60 does not simply set out, in programmatic terms, mere management-planning objectives, but imposes an obligation to prevent deterioration of the status of bodies of water that has binding effects on Member States once the ecological status of the body of water concerned has been determined, at each stage of the procedure prescribed by that directive and, in particular, during the process of granting permits for particular projects pursuant to the system of derogations set out 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 43 and 48).
- 33 Article 4 of Directive 2000/60 plays a part in the attainment of the main objective pursued by the measures taken under that directive, which, as is clear from Article 1 of that directive, read in the light of recitals 11, 19 and 27 thereof, is to protect the environment and, in particular, to maintain and improve the quality of the aquatic environment of the European Union.
- 34 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. The effectiveness of Directive 2000/60 and its aim of protecting the environment, which is recalled in the previous paragraph, require that individuals or, where appropriate, a duly constituted environmental organisation be able to rely on it in legal proceedings and that the national courts be able to take that directive into consideration as an element of EU law in order, *inter alia*, to review whether a national authority that has granted a permit for a project that may have an effect on the water status has complied with its obligations under Article 4 of the directive, in particular preventing the deterioration of bodies of water, and has thus kept within the limits of the discretion granted to the competent national authorities by that provision (see, by analogy, judgments of 25 July 2008, *Janecek*, C-237/07, EU:C:2008:447, paragraph 37, and of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 44).
- 35 In addition, according to settled case-law of the Court, under the principle of sincere cooperation laid down in Article 4(3) TEU, it is for the courts of the Member States to ensure judicial protection of a person's rights under EU law, Article 19(1) TEU additionally requiring Member States to provide remedies sufficient to ensure effective judicial protection in the fields covered by EU law (see, *inter alia*, judgment of 27 September 2017, *Puškár*, C-73/16, EU:C:2017:725, paragraph 57 and the case-law cited).
- 36 With regard, in particular, to the right of an environmental organisation such as Protect to bring proceedings against decisions to grant permits for projects which may be contrary to the obligation to prevent the deterioration of the status of bodies of water required by Article 4 of Directive 2000/60, it is not disputed that the decision to grant the permit at issue in the main proceedings does

not concern one of the activities listed in Annex I to the Aarhus Convention; accordingly, that decision does not fall within Article 6(1)(a) of that convention and, consequently, to that extent, does not fall within the scope of Article 9(2) of that convention either.

- 37 Therefore the question arises as to whether, in the main proceedings, Protect can, by virtue of Article 6(1)(b) of the Aarhus Convention, base its right to bring proceedings on Article 9(2) of that convention, on the ground that, in the circumstances of the case, in the context of earlier proceedings, a national authority examined, on the basis of an environmental impact assessment in respect of a project on a site protected under Directive 92/43, whether that project was likely adversely to affect the integrity of that site within the meaning of Article 6(3) of that directive.
- 38 Decisions adopted by the competent national authorities within the framework of Article 6(3) of Directive 92/43 on, inter alia, the appropriateness of the conclusions drawn from the environmental impact assessment in respect of a plan or project on a protected site with regard to the risks of that plan or project for the integrity of the site, regardless of whether they are independent or integrated in a decision granting a permit, are referred to in Article 6(1)(b) of the Aarhus Convention and therefore fall within the scope of application of Article 9(2) of that convention in so far as, prior to the grant of a permit for that activity, they involve assessment by those authorities as to whether, in the circumstances of the case, that activity is likely to have a significant effect on the environment (see, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraphs 56 and 57).
- 39 An environmental organisation, such as Protect, that fulfils the requirements set out in Article 2(5) of the Aarhus Convention in order to fall within ‘the public concerned’, within the meaning of that provision, must, in the context of the review procedure referred to in Article 9(2) of that convention, be able to rely in legal proceedings on the rules of national law implementing EU environmental law, including national law rules flowing from Article 6 of Directive 92/43, and the rules of EU environmental law having direct effect (see, to that effect, judgment of 8 November 2016, *Lesoochranárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraphs 59 and 60).
- 40 However, in the present case, it seems, subject to verification by the referring court, that, although Protect submitted, during the procedure for the grant of a permit, objections based on an infringement of Article 6(3) of Directive 92/43, it intends to contest the decision granting the permit resulting from that procedure on the sole ground that the procedure contravened national legislation relating to water that sought to transpose Directive 2000/60 and it has not challenged the earlier decision taken pursuant to Article 6(3).
- 41 Since, by its earlier decision, the national competent authority decided, on the basis of an impact assessment in respect of a project on a site protected under Directive 92/43, that that project would not adversely affect the integrity of that site, within the meaning of Article 6(3) of that directive, it could also follow that that project may not have a significant effect on the environment within the meaning of Article 6(1)(b) of the Aarhus Convention, so that the later decision, taken in the light of the legislation governing water-related matters, does not fall within the scope of Article 6 of that convention nor, consequently, to that extent, within the scope of Article 9(2) thereof.
- 42 However, that is so only if the referring court is in a position to satisfy itself that it is, in fact, ruled out that the project at issue may have a significant adverse effect on the state of the water forming the subject of the permit procedure at issue in the main proceedings.
- 43 It is only if, following its verification, the referring court had to find that such a significant adverse effect was ruled out, that it would follow that the question whether, in the present case, an environmental organisation, such as Protect, has a right to bring proceedings against a decision to

grant a permit for a project likely to be contrary to the obligation to prevent the deterioration of the status of water under Article 4 of Directive 2000/60 would have to be assessed in the light of Article 9(3) of the Aarhus Convention.

- 44 In that regard, it must be noted that, where a Member State lays down rules of procedural law applicable to the matters referred to in Article 9(3) of the Aarhus Convention concerning the exercise of the rights that an environmental organisation derives from Article 4 of Directive 2000/60, in order for decisions of the competent national authorities to be reviewed in the light of their obligations under that article, the Member State is implementing an obligation stemming from that article and must therefore be regarded as implementing EU law, for the purposes of Article 51(1) of the Charter of Fundamental Rights of the European Union ('the Charter'), so that the Charter is applicable (see, to that effect, judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 52).
- 45 It is true that only 'members of the public' that 'meet the criteria, if any, laid down in ... national law' have the rights set out in Article 9(3) of the Aarhus Convention, so that that provision, in itself, has no direct effect in EU law. However, the fact remains that that provision, read in conjunction with Article 47 of the Charter, imposes on Member States an obligation to ensure effective judicial protection of the rights conferred by EU law, in particular the provisions of environmental law (see, to that effect, judgment of 8 March 2011, *Lesoochránárske zoskupenie*, C-240/09, EU:C:2011:125, paragraphs 45 and 51).
- 46 As the Advocate General has noted, in essence, in points 89 and 90 of her Opinion, the right to bring proceedings set out in Article 9(3) of the Aarhus Convention would be deprived of all useful effect, and even of its very substance, if it had to be conceded that, by imposing those conditions, certain categories of 'members of the public', a fortiori 'the public concerned', such as environmental organisations that satisfy the requirements laid down in Article 2(5) of the Aarhus Convention, were to be denied of any right to bring proceedings.
- 47 Imposing those criteria must not deprive environmental organisations in particular of the possibility of verifying that the rules of EU environmental law are being complied with, given also that such rules are usually in the public interest, rather than simply in the interests of certain individuals, and that the objective of those organisations is to defend the public interest (see, to that effect, judgment of 12 May 2011, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen*, C-115/09, EU:C:2011:289, paragraph 46).
- 48 Although they imply that contracting states retain discretion as to the implementation of that provision, the words 'criteria, if any, laid down in its national law' in Article 9(3) of the Aarhus Convention cannot allow those states to impose criteria so strict that it would be effectively impossible for environmental organisations to contest the actions or omissions that are the subject of that provision.
- 49 In the present case, with regard to 'the criteria, if any,' laid down in Austrian law, the referring court states that recognition of the status of party to the procedure at issue in the main action, namely a procedure under legislation governing water-related matters, for environmental organisations that do not enjoy individual public-law rights cannot be based on the provisions of the WRG and, in particular, on Paragraph 102(1)(a) and (b) of that law.
- 50 In addition, that court explains that, under Austrian law, only natural and legal persons who are parties to the administrative procedure can bring an action before a court in order to claim that their rights have been infringed.

- 51 It appears to follow from those aspects of national law that, unless it is recognised as a party to the procedure in the context of legislation governing water-related matters, an environmental organisation, even if it satisfies the requirements set out in Article 2(5) of the Aarhus Convention to fall within the definition of ‘public concerned’, cannot, under Austrian law, bring proceedings before a national court in order to contest a decision to grant a permit in respect of a project that may be contrary to the obligation to prevent the deterioration of bodies of water set out in Article 4 of Directive 2000/60.
- 52 By thus denying environmental organisations any right to bring an action against such a decision to grant a permit, the relevant national procedural law is contrary to the requirements flowing from a combined reading of Article 9(3) of the Aarhus Convention and Article 47 of the Charter.
- 53 In the present case, it is apparent from the documents submitted to the Court that it is not ruled out, *prima facie*, that an environmental organisation, such as Protect, might nevertheless be recognised as having the status of party to the procedure on the basis of an interpretation of the general provision in Paragraph 8 of the AVG.
- 54 In that regard, it must be noted that it is for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring proceedings, in accordance with both the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law, in order to enable an environmental organisation, such as Protect, to challenge before a court a decision taken following an administrative procedure that may be contrary to EU environmental law (see, by analogy, judgment of 8 March 2011, *Lesoochránárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 52).
- 55 However, if such a compliant interpretation were to be found to be impossible, it would then be for the referring court to disapply, in the proceedings before it, the rule of national procedural law requiring the environmental organisation at issue to have the status of a party in order to be able to bring an action against a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60.
- 56 In that regard, it follows from the established case-law of the Court that a national court which is called upon, within the exercise of its jurisdiction, to apply rules of EU law is under a duty to give full effect to those rules, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is not necessary for the court to request or await the prior setting aside of such provision by legislative or other constitutional means (see, *inter alia*, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraphs 21 and 24, and of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 40 and the case-law cited).
- 57 Any provision of a national legal system and any legislative, administrative or judicial practice that might impair the effectiveness of EU law by withholding from the national court with jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions that might prevent EU rules from having full force and effect are incompatible with those requirements, which are the very essence of EU law (see, *inter alia*, judgments of 9 March 1978, *Simmenthal*, 106/77, EU:C:1978:49, paragraph 22, and of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 41 and the case-law cited).
- 58 Having regard to the foregoing, the answer to the first question is that Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that a duly constituted environmental organisation operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that

may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60.

The second question

- 59 By its second question, the referring court asks, in essence, whether, in a situation such as that in question in the main proceedings, compliance with the Aarhus Convention is ensured when a Member State provides for a right to bring judicial proceedings against the relevant administrative decision or whether such compliance requires additionally that the rights derived from Directive 2000/60 can already be relied upon in the context of the administrative procedure.
- 60 It follows from the answer to the first question that Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, must be interpreted as meaning that an environmental organisation, such as Protect, must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in Article 4 of Directive 2000/60.
- 61 However, the question of whether Protect also derives from the Aarhus Convention a right to participate in the administrative stage of the permit procedure in order to be able, in the context of that procedure, to allege a potential infringement of Article 4 of Directive 2000/60, is a separate question that must be assessed solely in the light of Article 6 of that convention, a provision that, as the Court has noted, forms an integral part of the EU legal order (judgment of 8 November 2016, *Lesoochránárske zoskupenie VLK*, C-243/15, EU:C:2016:838, paragraph 45).
- 62 Participation in an environmental decision-making procedure is separate and has a different purpose from judicial proceedings, since the latter may, in some circumstances, be directed at a decision adopted at the end of that procedure (see, to that effect, judgment of 15 October 2009, *Djurgården-Lilla Värtans Miljöskyddsförening*, C-263/08, EU:C:2009:631, paragraph 38).
- 63 As is clear from Article 6(3), (4) and (7) of the Aarhus Convention, Article 6 thereof confers on the public, in particular, the right to participate ‘effectively during the environmental decision-making’ by submitting ‘in writing or, as appropriate, at a public hearing or inquiry with the applicant, any comments, information, analyses or opinions that it considers relevant to the proposed activity’. There must be ‘early public participation, when all options are open and effective public participation can take place’.
- 64 However, in accordance with Article 6(1)(a) and (b) of the Aarhus Convention, the rights to participate granted by that article apply only in respect of decisions on whether to permit proposed activities that are either listed in Annex I or are not listed, but may have a significant effect on the environment.
- 65 As follows from paragraph 36 of this judgment, it is not disputed that the activity forming the subject of the decision to grant the permit at issue in the main proceedings is not listed in Annex I to the Aarhus Convention.
- 66 Consequently, it is only if the referring court finds, in the context of the assessment that it must carry out in accordance with what has been stated in paragraphs 41 to 43 of the present judgment, that the project at issue in the main action may have a significant effect on the environment within the meaning of Article 6(1)(b) of the Aarhus Convention, particularly with regard to the status of the water forming the subject of the permit procedure at issue in the main action, that Protect will derive from Article 6 of the Aarhus Convention a right to participate in the administrative stage of the permit procedure in order to be able to allege, in the context of that procedure, a potential infringement of Article 4 of Directive 2000/60.

- 67 However, if the referring court rules out that the project at issue in the main proceedings may have a significant effect on the status of the water concerned, it follows that Protect does not have the right to bring an action as provided for in Article 9(3) of the Aarhus Convention.
- 68 Although Article 9(3) of the Aarhus Convention itself does not require a Member State to confer a right to participate, as a party to the procedure, in an administrative procedure for the grant of a permit such as the one at issue in the main action, that is not the case if, according to national law, obtaining that status is a condition that must necessarily be satisfied in order to bring an action seeking to contest the decision adopted at the end of that procedure.
- 69 If national law establishes a link between the status of party to the administrative procedure and the right to bring judicial proceedings, the refusal of such status would deprive the right to bring proceedings of all useful effect, and even of its very substance, which would be contrary to Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter.
- 70 It is clear from the information provided by the referring court that Austrian law does establish such a link.
- 71 In that context, it is also necessary to take into account Article 14 of Directive 2000/60, headed ‘Public information and consultation’, in so far as it provides in the first sentence of paragraph 1 that Member States are to ‘encourage the active involvement of all interested parties in the implementation of this Directive, in particular in the production, review and updating of the river basin management plans’.
- 72 A procedure for the grant of a permit in respect of a particular project that may cause the deterioration of the status of a body of water must be construed as ‘implementation’ within the meaning of that provision (see, to that effect, judgment of 1 July 2015, *Bund für Umwelt und Naturschutz Deutschland*, C-461/13, EU:C:2015:433, paragraph 32).
- 73 Further, it follows from the words ‘in particular’ also in Article 14(1) of Directive 2000/60 that the active involvement of all interested parties is not limited to the production, review and updating of the river basin management plans.
- 74 However, the word ‘encourage’ in Article 14(1) is somewhat aspirational in nature, so that the binding nature of that provision is limited. That is indeed confirmed by the fact that, although the other provisions of Article 14 do contain actual obligations, they relate specifically to the procedure for the production, review and updating of the river basin management plans.
- 75 The fact remains that, when applying Directive 2000/60, a Member State is required to respect the substance of Article 14(1) of that directive, which consists of an obligation to encourage all relevant parties actively to participate in the implementation of that directive.
- 76 As has already been noted in paragraphs 49 to 51 of the present judgment, it appears to follow from the documents submitted to the Court that, under applicable national procedural law, even if an environmental organisation, such as Protect, meets the requirements set out in Article 2(5) of the Aarhus Convention and therefore falls within the definition of ‘public concerned’, it cannot, in principle, be granted the status of party to the procedure in the context of the administrative procedure carried out under the legislation governing water-related matters.
- 77 In addition, while it is not contested that Protect was able to participate, to a certain extent, in the permit procedure in its capacity as an ‘interested party’ within the meaning of Paragraph 102(2) of the WRG, which allowed it, inter alia, to raise arguments seeking to establish that the project at issue in the main proceedings is likely to affect the integrity of a protected site, within the meaning

of Article 6(3) of Directive 92/43, that status is not equivalent to the status of party to the procedure.

78 In that regard, it is apparent from the documents before the Court that the status of party to the procedure, had it been accorded to Protect, would have enabled it to participate actively in the decision-making process by setting out in greater detail and more appositely its arguments relating to the risks for the environment of the project envisaged, in particular those relating to the impact of that project on the status of the water, and by presenting those arguments in the form of objections that should have been taken into account by the competent authorities before that project was authorised and executed.

79 The active participation of Protect as a duly constituted environmental organisation operating in accordance with the requirements of applicable national law is all the more important, given that only such organisations are orientated towards the public interest, rather than towards the protection of the interests of individuals.

80 In those circumstances, it is for the referring court to interpret, to the fullest extent possible, the relevant procedural rules, in particular the general provision set out in Paragraph 8 of the AVG, in a manner that complies with Article 14(1) of Directive 2000/60, in order to enable an environmental organisation, such as Protect, to participate as a party to the proceedings in an administrative procedure for the grant of a permit, such as the one at issue in the main action, that is intended to implement that directive (see, by analogy, judgment of 8 March 2011, *Lesoochránárske zoskupenie*, C-240/09, EU:C:2011:125, paragraph 52).

81 Having regard to the foregoing, the answer to the second question is that the combined provisions of Article 9(3) of the Aarhus Convention, Article 47 of the Charter and Article 14(1) of Directive 2000/60 must be interpreted as precluding national procedural rules that deprive, in situations such as that in question in the main action, environmental organisations of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement Directive 2000/60 and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status.

The third question

82 By its third question, the referring court asks, in essence, whether Article 9(3) and (4) of the Aarhus Convention must be interpreted as precluding, in a situation such as that in the main action, a rule of national procedural law that imposes a time limit on an environmental organisation, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure, if it has failed to submit objections in good time following the opening of the administrative procedure or, at the very latest, during the oral phase of that procedure.

83 As a preliminary point, it must be noted that, as had already been pointed out in paragraphs 49 to 51 and 76 of the present judgment, it appears to follow from the order for reference that, pursuant to the applicable national procedural rules, an environmental organisation such as Protect cannot, in principle, obtain the status of a party to the procedure for the purpose of participating in the administrative procedure for the grant of a permit in respect of a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water under Article 4 of Directive 2000/60.

84 Since, in the present case, it thus appears, *prima facie*, to be ruled out that Protect could in fact have obtained the status of a party to that administrative procedure for the grant of a permit, it is not clear how Protect could have lost that status under Paragraph 42 of the AVG, which the referring court posits as its starting point in the context of its third question, especially as Paragraph 102(2) of the

WRG provides that only a person who is a party to the procedure enjoys a right to submit objections in the context of such an administrative procedure.

- 85 That said, it is necessary to answer the third question in so far as it is clear from the order for reference that, in the present case, Protect's action was dismissed by the court of first instance precisely because it had lost the status of party to the procedure pursuant to the time-barring rule set out in Paragraph 42 of the AVG, from which it follows that the question is not manifestly hypothetical within the meaning of the settled case-law of the Court (see, *inter alia*, judgment of 12 October 2017, *Kubicka*, C-218/16, EU:C:2017:755, paragraphs 30 and 31).
- 86 As to the substance of the third question, it must be noted that Article 9(3) of the Aarhus Convention expressly provides that the review procedures forming the subject of that provision may also be subject to 'criteria', from which it follows that, in principle, Member States may, in the context of the discretion they have in that regard, establish procedural rules setting out conditions that must be satisfied in order to be able to pursue such review procedures.
- 87 In that context, it must, however, be noted that, when they set out detailed procedural rules for legal actions intended to ensure the protection of rights conferred by Directive 2000/60, the Member States must ensure compliance with the right to an effective remedy and to a fair hearing, enshrined in Article 47 of the Charter, which constitutes a reaffirmation of the principle of effective judicial protection (see, to that effect, *inter alia*, judgment of 27 September 2017, *Pušár*, C-73/16, EU:C:2017:725, paragraph 59 and the case-law cited).
- 88 In principle, Article 9(3) of the Aarhus Convention does not preclude a rule imposing a time limit, such as the one set out in Paragraph 42 of the AVG, obliging the effective exercise, from the administrative procedure stage, of the right of a party to the procedure to submit objections regarding compliance with the relevant rules of environmental law, since such a rule may allow areas for dispute to be identified as quickly as possible and, where possible, resolved during the administrative procedure so that judicial proceedings are no longer necessary.
- 89 Thus, such a rule imposing a time limit may contribute to the objective of Article 9(3) of the Aarhus Convention, set out in the 18th recital of that convention, of providing effective judicial mechanisms and appears also to be in line with Article 9(4) of that convention, which requires that the procedures referred to, *inter alia*, in Article 9(3) of the convention provide 'adequate and effective' remedies that are 'equitable'.
- 90 In such circumstances, the rule imposing a time limit may — notwithstanding the fact that it constitutes, as a precondition for bringing judicial proceedings, a limitation on the right to an effective remedy before a court within the meaning of Article 47 of the Charter — be justified, in accordance with Article 52(1) of the Charter, to the extent that it is provided for by law, it respects the essence of that law, it is necessary, subject to the principle of proportionality, and it genuinely meets objectives of the public interest recognised by the EU or the need to protect the rights and freedoms of others (see, by analogy, judgment of 27 September 2017, *Pušár*, C-73/16, EU:C:2017:725, paragraphs 61 to 71).
- 91 In order to comply with the requirement of proportionality, the practical arrangements for the exercise of administrative remedies available under Austrian law must not disproportionately affect the right to an effective remedy before a court referred to in Article 47 of the Charter (see, by analogy, judgment of 27 September 2017, *Pušár*, C-73/16, EU:C:2017:725, paragraph 72).
- 92 In that regard, the question arises as to whether, in a situation such as that in the main action, the imposition of the time limit concerned on an environmental organisation, such as Protect, is such as

to excessively restrict the right to bring judicial proceedings, which is intended to be guaranteed by Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, for the protection of the rights conferred by Article 4 of Directive 2000/60.

- 93 While it is ultimately for the referring court to answer that question in the light of an assessment of all relevant matters of fact and national law, it appears, having regard to the documents submitted to the Court but subject to verification by the referring court, that the question calls for an answer in the affirmative.
- 94 In that regard, it is hard to criticise Protect for having failed to prevent the time limit set out in Paragraph 42 of the AVG from being applied by exercising, already at the administrative procedure stage, the right, conferred by virtue of being a party to the procedure, to submit objections based on an infringement of legislation governing water-related matters, which seeks to transpose Directive 2000/60 into national law.
- 95 Protect asked the competent authorities to accord it the status of party to the procedure, but was refused principally on the ground that Paragraph 102(1) of the WRG has no legal basis to that effect. Consequently, Protect had to participate in the administrative procedure as an ‘interested party’ within the meaning of Paragraph 102(2) of the WRG, which, in accordance with Paragraph 102(3) of the WRG, did not grant it the right to submit objections that the authorities had to take into account before taking a decision on the application for a permit.
- 96 Consequently, having regard to applicable national procedural law, it appears that complaining that an organisation failed to submit objections in good time in order to avoid the time limit set out in Paragraph 42 of the AVG from being applied is equivalent to requiring that organisation to fulfil an obligation that it cannot, a priori, fulfil. However, no one can be obliged to do the impossible (*impossibilium nulla obligatio est*).
- 97 In addition, even though, as the Austrian Government claims, the obligation set out in Paragraph 42 of the AVG is more procedural in nature, in the sense that, in order to avoid the time limit from being applied, it would suffice for the objections submitted merely to state generally that the permit for the project at issue was contrary to a provision of the WRG and the justification for the objections could be supplied at a later stage, the fact remains that, in the main action, environmental organisations could reasonably conclude from the applicable procedural rules that they first had to obtain the status of party to the procedure in order then to be able to exercise the right to submit objections, such right being conferred by that status.
- 98 Subject to verification by the referring court, it therefore appears that, in a situation, created by applicable national procedural law, that is at the very least equivocal, the imposition of the time limit set out in Paragraph 42 of the AVG on Protect, leading to it losing both its status as a party to the administrative procedure for the grant of the permit at issue and its right to bring an action against the decision issued at the end of that procedure, is an excessive restriction of the right to bring judicial proceedings that is intended to be guaranteed by Article 9(3) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, for the protection of the rights conferred by Article 4 of Directive 2000/60.
- 99 To that extent, imposing that rule in a situation such as that in question in the main action is a limitation of the right to an effective remedy before a court, within the meaning of Article 47 of the Charter, that is not justified in accordance with Article 52(1) of the Charter.
- 100 Consequently, subject to verification by the referring court of the relevant national rules and facts, that court is bound, in accordance with the principles set out in paragraphs 55 and 56 of the present judgment, to disapply, in the proceedings before it, the time limit set out in the applicable national

procedural law.

- 101 Having regard to the foregoing, the answer to the third question is that, subject to verification by the referring court of the relevant matters of fact and national law, Article 9(3) and (4) of the Aarhus Convention, read in conjunction with Article 47 of the Charter, must be interpreted as precluding, in a situation such as that in question in the main action, a national procedural rule that imposes a time limit on an environmental organisation, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure.

Costs

- 102 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 (Second Chamber) hereby rules:

1. **Article 9(3) of 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, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that a duly constituted environmental organisation operating in accordance with the requirements of national law must be able to contest before a court a decision granting a permit for a project that may be contrary to the obligation to prevent the deterioration of the status of bodies of water as set out in 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.**
2. **The combined provisions of Article 9(3) of that convention approved by Decision 2005/370, Article 47 of the Charter of Fundamental Rights and Article 14(1) of Directive 2000/60 must be interpreted as precluding national procedural rules that deprive, in situations such as that in question in the main action, environmental organisations of the right to participate, as a party to the procedure, in a permit procedure that is intended to implement Directive 2000/60 and limit the right to bring proceedings contesting decisions resulting from such procedure solely to persons who do have that status.**
3. **Subject to verification by the referring court of the relevant matters of fact and national law, Article 9(3) and (4) of that convention approved by Decision 2005/370, read in conjunction with Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding, in a situation such as that in question in the main action, a national procedural rule that imposes a time limit on an environmental organisation, pursuant to which a person loses the status of party to the procedure and therefore cannot bring an action against the decision resulting from that procedure if it failed to submit objections in good time following the opening of the administrative procedure and, at the very latest, during the oral phase of that procedure.**

[Signatures]

* Language of the case: German.