Annex – Examples of recently developed jurisprudence of German courts

No.	Court, Type of decision, Date, Docket no.	Subject matter of the proceedings	Content
1	Higher Administrative Court of Mannheim, judgment dated 20 July 2011, docket no. 10 S 2102/09	Action for rescission by a recognised environmental association against approval under imission control law for the expansion of a coal-fired power station	Margin note 66 et seq: 1.1 According to section 2 (5) first sentence no. 1 of the Environmental Appeals Act, an appeal may be filed under section 2 (1) of the Environmental Appeals Act if the decision under section 1 (1) of the Environmental Appeals Act infringes statutory provisions which serve the protection of the environment, confer rights on individuals and may be of importance for the decision, and the infringement affects environmental protection concerns which according to the organisation's charter, are among the objectives to be promoted. This provision modifies section 113 (1) of the Rules of Procedure of the Administrative Courts (VGH Hesse, judgment dated 16 September 2009 loc.cit., Schlacke, NuR 2007, 12) and corresponds to the provision concerning the standing to take legal action of an environmental association under section 2 (1) no. 1 of the Environmental Appeals Act. [67] **According to the decision of the Court of Justice of the European Union dated 12 May 2011 (C-115/09 - Trianel - NVwZ 2011, 801, juris), Article 10a(3) third sentence of the EIA Directive does, however, preclude national rules which do not permit an environmental association to rely before the courts, in an action appealing provisions of environmental law on the infringement of a rule flowing from EU law and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals (Headnote 1, margin note 48, 50). Accordingly, section 2 (1) no. 1, (5) no. 1 of the Environmental Appeals Act is not in conformity with EU law to the extent a rule intended to protect the environment flowing from EU law is concerned. According to the aforementioned decision of the Court of Justice of the European Union, a non-governmental organisation may furthermore derive a direct right from Article 10a(3) third sentence of the EIA Directive to rely before the courts, in an action appealing provisions of environmental law on the infringement of a rule under national law flowing from EU law, even though national procedural law would prohibit this, on the ground that that relevant rule protects only the interests of the general public and not the interests of individuals (Headnote 2). Accordingly, the plaintiff's standing to take legal action and the Court's scope of review with respect to substantive law is not**

			restricted to provisions which confer rights on individuals.
2	Federal Administrative Court, decision dated 29 September 2011, docket no. 7 C 21/09	Action for rescission by a recognised environmental association against approval under imission control law for the construction and operation of an incineration plant	Margin note 25 et seq: The appellant's appeal on points of law is admissible and has merit, with the result that the matter will be remanded to the Higher Administrative Court. The challenged judgment contravenes contestable points of law. **The Higher Administrative Court incorrectly assumed that the appellant's standing to take legal action in the context of an action by an environmental association under section 2 of the Environmental Appeals Act was limited to infringements of the authorisation notice against provisions of nature conservation and environmental protection law serving to protect third parties (1). The in this respect incorrect decision to omit a review of the infringement of the law as a whole requires that the case be remanded to the Higher Administrative Court (2). [..]** [26] 1. The challenged judgment contravenes contestable law (Article 10a of the EIA Directive) to the extent the appellant, relying on section 2 (5) first sentence no. 1 of the Environmental Appeals Act, was denied the right to censure infringements of the substance of environmental law provisions, where those provisions have their origin in EU law. [27] According to section 2 (5) first sentence no. 1 of the Environmental Appeals Act, environmental protection organisations pursuant to paragraph 1 may file an appeal if the decision under section 1 (1) or the failure to make such a decision infringes statutory provisions which serve the protection of the environment, confer rights on individuals and may be of importance for the decision and the infringement affects environmental protection concerns which according to the respective organisation's charter, are among the objectives to be promoted. Based on the language of section 2 (5) of the Environmental Appeals Act and the legislative history and the spirit and purpose of the provision, the standing of environmental protection organisations to take legal action under the Environmental Appeals Act clearly has an accessory function, i.e., the infringed provision being censured must (also) serve to protect third parties. **This restriction on standing to take legal action contravenes Article 10a of Directive 85/337/EEC.**

			This follows from the judgment of the Court of Justice of the European Union (CJEU) dated 12 May 2011 (case C-115/09 , Trianel, DVBl 2001, 757). According to that case, Article 10a of Directive 85/337/EEC precludes any rule which does not permit non-governmental organisations promoting environmental protection, as referred to in Article 1(2) of that Directive, to rely before the courts, in an action contesting a decision authorising projects 'likely to have significant effects on the environment' for the purposes of Article 1(1) of Directive 85/337/EEC, on the infringement of a rule flowing from the environment law of the European Union and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals. **[28]** **In view of the legislature's express intent, which is also expressed in the clear language of the provision, section 2 (5) first sentence no. 1 of the Environmental Appeals Act cannot be interpreted in conformity with the Directive. Until the necessary amendments have been made to the Environmental Appeals Act to reflect the legal situation under EU law, this provision is not applicable and recognised environmental protection organisations may censure infringements of environmental provisions flowing from EU law directly on the basis of Article 10a of Directive 85/337/EEC in the version of Directive 2003/35/EC (CJEU, judgment dated 12 May 2011, - case C-115/09, margin notes 56 to 59 - loc. cit.).**
3	Administrative Court of Wiesbaden, judgment dated 10 October 2011, docket no. 4 K 757/11.WI	General action for satisfaction by an environmental association to issue an air quality maintenance plan	Margin note 57: This does not apply with respect to the plaintiff under 2), which as an environmental association is seeking to achieve its objective by means of an altruistic legal action brought by an association rather than asserting the infringement of its individual rights. The national law of the Federal Republic of Germany does not recognise any express right of an association to take legal action with respect to air quality maintenance planning. Nevertheless, the plaintiff under 2) has standing to take legal action. This is the assumption on which the court of decision proceeds, recognising the guiding function of the decision of the Court of Justice of the European Union dated 8 March 2011 (C-240/09, NVwZ 2011, 673 et seq.) and even after having assessed the defendant's criticism of that decision. According to the requirements laid down by

			the CJEU, it is for the court to interpret the national procedural rules relating to the conditions to be met in order to bring judicial proceedings so as to enable an environmental protection organisation to challenge before a court a decision liable to be contrary to EU environmental law. This decision on interpretation is not generally binding but does have a certain guiding function (see, Schwarze, Europäisches Verwaltungsrecht, p. 62) because, given the same set of facts, the CJEU is not likely to stray from these principles of interpretation once they have been established as judicial precedent, unless there has been a substantial change in general conditions. But this is specifically not the case at present. It is hardly likely that this barely six-month-old CJEU case law on effective judicial protection for environmental protection organisations involving decisions of national authorities which are liable to be contrary to EU environment law would be modified, because neither the legislation nor the economic or social conditions or any other findings have changed since then. **Accordingly, the plaintiff under 2) as an organisation recognised under section 3 of the Environmental Appeals Act which is also active, inter alia, in the area of air quality maintenance, also has standing to take legal action if, as in the present case, it is censuring an infringement of requirements of European imission control law, even where national procedural rules (still) do not expressly recognise any such standing to take legal action.**
4	Administrative Court of Ansbach, judgment dated 19 October 2011, docket no. AN 11 K 10.00643	Action for rescission by an environmental association against the imission control law approval of a quarry	Margin note 45: It remains doubtful as to whether or to what extent the provisions serving to protect the environment, the infringement of which the plaintiff is censuring, must confer rights on individuals or not. Based on a literal and historical interpretation of section 2 (1) no.1 of the Environmental Appeals Act and according to the national legislation and case law applicable in this case (see Article 20a of the German Basic Law (Grundgesetz - GG) and before that BVerwG NJW 1975, 2355), there would generally be no individual public-law right on the part of third parties in the case of an infringement of provisions on nature conservation, landscape and groundwater protection as well as landmark protection. As already stated above, this was a highly controversial legal issue, but has since been settled by the Court of Justice of the European Union in the context of the Higher Administrative Court's order for reference (CJEU judgment dated 12 May 2011, cited in juris; see Durner/Paus DVBl 2011,759; Henning NJW 2011, 2765; Berkemann DVBl 2011, 1253). **Accordingly, an environmental association may in this regard not be**

			precluded from asserting the infringement of a rule of national environmental law flowing from EU environment law and intended to protect the environment, on the ground that that rule protects only the interests of the general public and not the interests of individuals. These are the rules of national law implementing EU environment law and the rules of EU environment law having direct effect. These are primarily the EU Directives which are to be transposed into national law pursuant to Article 288 of the Treaty on the functioning of the European Union (TFEU).
5	Higher Administrative Court of North Rhine Westphalia, judgment dated 1 December 2011, docket no. 8 D 58/08.K	Action for rescission by an authorised environmental association against decisions under imission control law relating to a coal-fired power station	Margin note 90 et seq: The plaintiff has standing to take legal action. Under section 42 (2) of the Rules of Procedure of the Administrative Courts (Verwaltungsgerichtsordnung - VwGO), the action for rescission is only admissible if the plaintiff can claim that its rights have been violated by the administrative act. However, this only applies unless not otherwise provided by law. [91] Section 2 (1) no. 1 UmwRG is such a provision providing otherwise by law. It provides that a German or foreign association recognised under section 3 UmwRG may, without having to assert that its own rights have been violated, file appeals in accordance with the Rules of the Administrative Courts against a decision under section 1 (1) sentence 1 UmwRG or against failure to make such a decision if the association asserts that a decision under section 1 (1) sentence 1 UmwRG or the failure to make such a decision is inconsistent with statutory provisions which serve the protection of the environment, create individual rights and may be of importance for the decision. These requirements are satisfied. [..] [98] The plaintiff asserts that such provisions have been violated and that as a environmental organisation it is entitled to challenge this violation. [99] **However, section 2 (1) no. 1 UmwRG which is restricted to the assertion of provisions which create individual rights, is not a sufficient implementation of the requirements of Article 10a of the EIA Directive, at all events with regard to environmental provisions under European Union law.**

			[..] [101] As the Court of Justice of the European Union (CJEU) decided [..] [103] in response to the reference for a preliminary ruling of the Senate of 5 March 2009 submitted in the present proceedings, this is based on the following: [104] Under Article 10a (1) of the EIA Directive, the Member States have a duty to ensure that, in accordance with the relevant national legal system, members of the public concerned: [105] (a) having a sufficient interest, or alternatively, [106] (b) maintaining the impairment of a right, where administrative procedural law of a Member State requires this as a precondition, [107] have access to a review proceeding 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 participations of this Directive. [108] Under para. 3 of Article 10a EIA Directive, the Member States determine, consistently with the objective of giving the public concerned wide access to justice, what constitutes a sufficient interest and impairment of a right. To this end, the interest of any non-governmental organisation meeting the requirements referred to in Article 1 (2) shall be deemed sufficient for the purpose of subparagraph (a) of this Article. Such organisations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) of this Article. [109] Article 10a para. 3 sentence 3 of the EIA Directive must be understood in the sense that the "rights capable of being impaired" whose holders are deemed to be the environmental organisations, must mandatorily include the national statutory provisions which implement the legal provisions of the European Union in the area of the environment, and the directly applicable provisions of European Union environmental law. **If domestic procedural law - as in the present case section 2 (1) no. 1 UmwRG - cannot be brought into conformity with the requirements of EU law, the Directive is to apply directly. Article 10a EIA Directive admittedly gives the Member States considerable latitude. But this does not apply to sentences 2 and 3 of Article 10a para. 3 EIA Directive, that is, with regard to the require-**

			ments for the right of action of organisations for the protection of the environment. **[110] Proceeding on this basis, there are no objections to the plaintiff's right of action.** In particular, it may rely on the fact that the power plant project does not satisfy the requirements of the Habitats [..] [112] Directive. In addition, in alleging that the operational air pollution entails dangers to health, it asserts the violation of a provision - section 5 (1) sentence 1 no. 1 BImSchG - which serves protection of the environment and may create individual rights. Within the potential area affected by the installation (see no. 4.6.2.5 TA Luft), it is not obvious, and from every aspect it is out of the question that there are adverse effects on the neighbourhood. [113] **Whether, over and above provisions designed to protect third-party interests and EU environmental law provisions, the plaintiff is also entitled to assert any violation of environment-related provisions which are contained solely in domestic law, and in particular whether this follows from a direct application of Article 9 para. 2 of the Aarhus Convention in the present legal situation,** **[..]** **[115] need not be decided here inter alia because the violation of such provisions - as set out below - is at all events not relevant to the decision.** This also applies insofar as the precautionary principle laid down in section 5 (1) sentence 1 no. 2 BImSchG, with regard to the fact that EU environmental law is characterised by the precautionary principle, [..] [117] is probably to be seen as one of the challengeable environmental provisions of EU law.
6	Federal Administrative Court, judgment dated 20 December 2011, docket no. 9 A 31/10	Action for rescission by a recognised nature conservation organisation against the drainage provi-	Margin note 16 et seq: The plaintiff has standing to take legal action. [17] a) To the extent the applicant objects to the amendments made to the drainage provisions by

		sions of planning approval notices relating to the construction of a highway.	way of the plan approval, its standing to take legal action first of all derives from section 42 (2) of the Rules of Procedure of the Administrative Courts in conjunction with section 12b of the Landscape Act of North Rhine Westphalia (Landschaftsgesetz NRW - LG NRW) and section 64 (1) of the Federal Nature Conservation Act. Under these provisions, a recognised nature reserve organisation may, contrary to the provisions of section 42 (2) of the Rules of Procedure of the Administrative Courts, appeal, inter alia, against planning approval notices concerning projects involving invasions of nature and landscape regardless of whether any individual rights of its own have been impaired, provided that the requirements set out in 12b of the Landscape Act of North Rhine Westphalia or section 64 (1) of the Federal Nature Conservation Act are met. The plaintiff is such an organisation recognised by the state of North Rhine Westphalia. Its action against the amendments under the plan approval also complies with the further requirements of an action by an association under nature conservation law; it is (also) asserting infringements against provisions of nature conservation law, is affected by the amendments with respect to the areas of activity and responsibility as stipulated in its charter which are covered by the recognition, and has exercised its right of participation. [18] b) By contrast, the water law authorisation which is also being challenged does not constitute a legal act which is contestable by the action of an association under nature conservation law. In this respect, the standing to take legal action, just as the action for rescission against the amendments under the plan approval, derives from section 42 (2) of the Rules of Procedure of the Administrative Courts in conjunction with section 2 (1) of the Environmental Appeals Act, 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, amended by Council Directive 2003/35/EC of 26 May 2003 (EIA Directive). [..] On this basis, the plaintiff may take legal action in accordance with section 2 (1) of the Environmental Appeals Act against decisions as defined in section 1 (1) first sentence of the Environmental Appeals Act, regardless of whether its own individual rights might be impaired. These decisions include, in particular, authorisations and planning approval notices concerning the permissibility of projects which may be subject to a duty to conduct an environmental impact assessment under the Act on the Assessment of Environmental Impacts (section 1 (1) first sentence no. 1 a) of the Environmental Appeals Act in conjunction with section 2 (3) no. 1 of the Act on the Assessment of Environ-

			mental Impacts). [..] [19] **The conditions under which an organisation which is recognised or deemed to be recognised under section 3 of the Environmental Appeals Act has standing to challenge such decisions have been satisfied. The controlling provision in this case is section 2 (1) of the Environmental Appeals Act, which in consideration of the requirements of EU law may, however, only be applied subject to modification.** [..] [21] It appears doubtful that the provisions criticised as having been infringed also include provisions that confer rights on individuals as section 2 (1) no. 1 of the Environmental Appeals Act further requires, but in view of the facts of the case this question need not be clarified because these provisions are anchored in EU law. **The environmental law action by the association which is designed to (also) serve to protect third parties contravenes Article 10a of the EIA Directive to the extent that it seeks to assert infringements of provisions on the implementation of EU law. As the Court of Justice of the European Union stated in its judgment dated 12 May 2011 (Case C-115/09, Trianel - NJW 2011, 2779, margin note 46), Article 10a of the EIA Directive precludes rules which do not permit environmental protection organisations within the meaning of Article 1(2) of the EIA Directive, to rely before the courts, in an action contesting a decision authorising projects within the meaning of Article 1(1) of the EIA Directive, on the impairment of rules of EU environmental law, solely on the ground that those rules protect only the interests of the general public and not the interests of individuals. Having regard to the primacy of EU law, in the application of section 2 (1) no. 1 of the Environmental Appeals Act, the restrictive requirement that only those rules which confer rights on individuals may be censured as having been infringed must therefore be excluded to the extent environmental law provisions for the implementation of EU law are involved.** The latter applies in any case with respect to the provisions on the necessity of an environmental impact assessment being claimed by the plaintiff as having been infringed. They also form a sound basis for the standing to take legal action of the plaintiff, which, as an environmental association (regardless of the more specific struc-

			ture of the national system of legal remedies) has a right under Article 10a(1) of the EIA Directive to challenge the substantive and procedural legality of any decision in a review procedure before a court of law (see CJEU, judgment dated 12 May 2011 loc. cit., margin note 42). [..]
7	Administrative Court of Osnabrück, decision dated 21 December 2011, docket no. 2 B 16/11	Application by a recognised environmental association to restore the suspensive effect of its objection against a permit for alteration under imission control law for an animal husbandry facility.	Margin note 46: **The applicant primarily relies on the infringement of environmental provisions that do not serve the protection of third parties, i.e., which do not "confer any individual rights" within the meaning of section 2 (1) no. 1 of the Environmental Appeals Act**, because it is primarily asserting the environmental impact assessment which in its view should have been conducted but was not, the infringement of nature conservation law (section 34 of the Federal Nature Conservation Act) and the infringement of duties under imission control law in relation to the forest as a protected resource. **According to the decision of the Court of Justice of the European Union dated 12 May 2011 (C-115/09, juris), recognised environmental associations may, contrary to section 2 (1) no. 1 of the Environmental Appeals Act nevertheless assert an infringement of environmental provisions that do not serve to protect third parties as well, based directly on Article 10a(3) of Directive 85/337/EEC in the version amended by Directive 2003/35/EC (so-called EIA Directive).** However, to the extent these are not rules of EU environment law having direct effect, they must be rules "implementing EU environment law", thus rules "flowing from" EU legislation (margin note 48, 49). **Consequently, as a result of the CJEU's presumption that Article 10a of the EIA Directive has direct effect, the application of section 2 (1) no. 1 of the Environmental Appeals Act is prohibited because an interpretation in conformity with EU law contrary to the clear language of the statute would not be possible. Because the applicant in this case is asserting the infringement of provisions of the Act on the Assessment of Environmental Impacts which were adopted pursuant to the implementation of the EIA Directive and also claims the infringement of section 34 of the Federal Nature Conservation Act, which serves to implement Article 6 of the Habitats Directive, these are also "censurable" provisions within the meaning of the decision cited.**
8	Higher Administrative	Application for judi-	Margin note 27 et seq:

	Court of North Rhine Westphalia, judgment dated 20 January 2012, docket no. 2 D 141/09.NE	cial review by a citizens' group against a development plan.	**The applicant has standing to lodge an application. Its standing follows from the requirements of the Environmental Appeals Act in conjunction with the provisions of the underlying Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ. EU No. L 156 p. 17).** [..] [35] 1.4 The applicant shall have standing to lodge an application even to the extent it asserts that concerns of nature conservation and protection of the species law were not sufficiently taken into consideration, namely failure to observe bans on access under section 42 (1) of the Federal Nature Conservation Act. [..]. **As such, provisions and concerns are raised which, contrary to the clear language and objectives of section 2 of the Environmental Appeals Act, do not also confer rights on individuals.** [36] With respect to the objectives of the draft bill on supplemental provisions on appeals in environmental matters under EC Directive 2003/35/ EC (Environmental Appeals Act), see BR-Drs. 552/06, p. 19 et seq., and BT-Drs. 16/2495, p. 12; see also OVG NRW, decision dated 5 March 2009 - 8 D 58/08.AK -, NVwZ 2009, 987 = juris margin note 63. [37] **This restriction of the standing to lodge an application of recognised environmental protection organisations also contravenes 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 L 175, p. 40) in the version amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes (OJ L 156, p. 17) (hereinafter: Directive 85/337/EEC). Until the necessary amendments have been made to the Environmental Appeals Act, recognised environmental protection organisations may censure infringements of environmental provisions flowing from EU law directly on the**

			basis of Article 10a of Directive 85/337/EEC. [38] See CJEU, judgment dated 12 May 2011 - C-115/09 -, margin note 56 et seq., OJ EU 2011, no. C 204, 6 = DVBl 2011, 757 = juris; BVerwG, judgment dated 29 September 2011 - 7 C 21.09 -, juris margin note 26 et seq.
9	Administrative Court of Munich, judgment dated 27 March 2012, docket no. M 1 K 11.5898	Challenge by a recognised nature conservation association to approval under imission control law for an animal husbandry facility.	Margin note 27 et seq: The action is admissible; specifically, the plaintiff has standing to take legal action. Section 42 (2) of the Rules of Procedure of the Administrative Courts stipulates that an action for rescission is only admissible if the plaintiff can assert that its individual rights have been infringed by the administrative order. However, this applies only in those cases where the law does not provide otherwise. Section 2 (1) no. 1 of the Environmental Appeals Act constitutes such a deviating provision. As a recognised nature conservation organisation pursuant to section 3 of the Environmental Appeals Act, the plaintiff may itself claim the right of an association to take legal action under section 2 (1) no. 1 of the Environmental Appeals Act without having to assert that its individual rights were infringed by the approval under imission control law. Under section 2 (1) no. 1 of the Environmental Appeals Act, a recognised nature conservation organisation may lodge an appeal pursuant to the Rules of Procedure of the Administrative Courts against "a decision under section 1 (1) first sentence of the Environmental Appeals Act or against failure to make such a decision" if it asserts that said decision is inconsistent with statutory provisions which serve the protection of the environment, create individual rights and may be of importance for the decision. The plaintiff asserts the infringement of provisions which as an environmental association it has right to censure (see section 2 (1) no. 2 of the Environmental Appeals Act) and has already raised this in the administrative proceedings (see section 2 (1) no. 3 of the Environmental Appeals Act). [..] [29] The plaintiff may base its submission on section 2 (1) no. 1 of the Environmental Appeals Act that, in issuing approval under imission control law, the District Administration (Landratsamt) unlawfully failed to conduct an assessment of the implications for the site. It may assert that as

			a result thereof, the District Administration infringed 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 EC L 206, p. 7, in the version of Directive 2006/105/EC of 20 November 2006, OJ L 363, p. 368 - Habitats Directive) and thus infringed a legal provision serving to protect the environment. **Contrary to the language of section 2 (1) no. 1 of the Environmental Appeals Act, it is not necessary that Article 6(3) of the Habitats Directive confer rights on individuals because the restriction of standing to take legal action of recognised environmental protection organisations to environmental provisions serving to protect third parties in section 2 (1) no. 1, (5) first sentence no. 1 of the Environmental Appeals Act contravenes Article 10a of the EIA Directive (BVerwG dated 29 September 2011, 7 C 21.09 juris Ls. 1 and margin note 27 re section 2 (5) first sentence 1 no. 1 of the Environmental Appeals Act, following CJEU judgment dated 12 May 2011, loc. cit., margin note 59). Pursuant to Article 10a(3) third sentence of the EIA Directive, organisations such as that of the plaintiff also qualify as holders of rights protected by such environmental provisions (CJEU judgment dated 12 May 2011, loc cit., margin notes 48, 59). Until the Environmental Appeals Act has been amended, recognised environmental protection organisations may therefore censure infringements of such provisions directly on the basis of Article 10a of this Directive (BVerwG, judgment dated 29 September 2011, loc. cit.).**
10	Higher Administrative Court of Hesse, decision dated 14 May 2012, docket no. 9 B 1918/11	Application by an environmental association to restore the suspensive effect of its action for rescission against approval under imission control law for the construction and operation of wind-powered installations.	Margin note 23 et seq: **Since the case law of the Court of Justice of the European Union, taking into consideration the Aarhus Convention and the incorporation of Article 10a in the EIA Directive (now Article 11 of the 2012 EIA Directive), nevertheless increasingly views environmental assessments as a strict and actionable obligation under procedural law (most recently, CJEU, judgment dated 12 May 2011 - case C-115/09 -, juris margin note 56 et seq.) and the Federal Administrative Court therefore decided in a more recent decision that restricting the standing to take legal action of environmental protection organisations within the meaning of section 2 (1) of the Environmental Appeals Act to environmental provisions "serving to protect third parties" in section 2 (5) first sentence no. 1 of the Environmental Appeals Act contravenes Article 10a of Directive 85/337/EEC (now: Article 11 of the 2012 EIA Directive) (BVerwG, judgment dated 29 September 2011 - 7 C 21/09 -,**

			juris;), the interest of non-governmental organisations satisfying the requirements set out in Article 1(2) of the EIA Directive shall henceforth qualify as sufficient interest within the meaning of Article 10a (1) a) (now: Article 11(1)a) of the 2012 EIA Directive). [..] [35] With respect to infringements of federal regional planning law asserted by the applicant, its standing to lodge an application may not be denied to the extent it relies on EU environmental law and the implementation thereof by federal regional planning, which is to be considered in the approval proceedings. The applicant cites species protected under the Habitats Directive, including red and black kites, black storks and various species of bats. **According to a more recent decision by the Court of Justice of the European Union, in a case such as this, national law must, in order to ensure effective judicial protection in the fields covered by EU environmental law, be interpreted in a way which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) of the Aarhus Convention (Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 17 February 2005, OJ L 124, p. 1) (CJEU, 8 March 2011 – C-240/09 -, juris). Accordingly, national procedural law must also be interpreted so as to enable an environmental protection association to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law (CJEU, loc. cit.).** The basis for this must be that in any regional planning proceedings, EU environmental law must be applied in many respects as follows from the grounds set out in the applicable 2010 Central Hesse regional planning, i.e., specifically based the potential impact on a bird reserve and nearby areas of conservation under the Habitats Directive. In view of this and in consideration of more recent case law on Article 10a (now Article 11) of the EIA Directive, the applicant may not be denied the right to lodge an application and take legal action with respect to asserting that no proceeding were held to obtain permission to deviate from the objective of Central Hesse's 2010 regional planning or that such proceedings were deficient simply because only national procedural law is involved and regional planning law does not grant the applicant itself any individual legal entitlement.

11	Higher Administrative Court of North Rhine Westphalia, judgment dated 12 June 2012, docket no. 8 D 38/08.AK	Challenge by a recognised environmental association to the advance notice on the construction and operation of the Datteln IV coal-fired power station	Margin note 172 et seq: 4. **The applicant is entitled to challenge the infringement of the planning rules. This follows from section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act in conjunction with article 9, paragraph 2, subparagraph 2, second and third sentences of the Aarhus Convention.** [..] [182] (b) The applicant's standing to challenge the fact that certain planning rules have been infringed follows from section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act in conjunction with article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention. As a result of the Assenting Act of 9 December 2006 and subsequent ratification, the Aarhus Convention has the force of domestic law. [183] The present case concerns a project which is covered by article 9, paragraph 2, subparagraph 1, of the Aarhus Convention (see section (aa) below). Article 9, paragraph 2, subparagraph 1, and subparagraph 2, second and third sentences, of the Aarhus Convention confers on recognised environmental associations the right to challenge a violation of provisions protecting third party interests regardless whether the violation at issue relates to a rule of EU law or domestic law (see section (bb) below). The direct effect of that convention provision, resulting from the Assenting Act of 9 December 2006, (see section (cc) below) supplements the provisions of section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act (see section (dd) below). The Aarhus Convention applies in the present case as the transitional arrangements established by section 5 (1) of the Environmental Appeals Act also cover the directly effective provisions of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention (see section (ee) below). [..] [185] bb) **Article 9, paragraph 2, subparagraph 1, and subparagraph 2, second and third sentences, of the Aarhus Convention must be interpreted as conferring on recognised environmental associations the right to challenge an infringement of provisions protecting third party interests regardless whether the infringement concerns a rule of EU law or 'mere' domestic law.**

			[186] See Berkemann, NordÖR 2009, p. 336, at p. 342; Bunge, NuR 2011, p. 605, at p. 608; Ekardt, NVwZ 2012, p. 530, at p. 531; Hong, JZ 2012, p. 380, at p. 387; Kleinschnittger, l+E 2011, p. 280, at p. 285; Koch, NVwZ 2007, p. 369, at p. 376; Niederstadt and Weber, NuR 2009, p. 297, at p. 302; Wegener, ZUR 2011, p. 363, at p. 366. For a different view, see von Danwitz, NVwZ 2004, p. 272, at pp. 278-9. [187] The interpretation of international treaties is governed by the Vienna Convention on the Law of Treaties (BGBl. II 1985, p. 927 et seq.) to which the Bundestag gave its assent by the Act of 3 August 1985 (BGBl. II, p. 926) and which entered into force for the Federal Republic of Germany on 20 August 1987 (BGBl. II, p. 757). Pursuant to article 31, paragraph 1, of that convention, a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. [188] **Having regard to that principle of interpretation, contrary to the view taken by the defendant and the intervening party, article 9, paragraph 2, subparagraph 1, and subparagraph 2, second and third sentences, of the Aarhus Convention requires Convention States to ensure that recognised environmental associations can bring actions asserting the violation of provisions not establishing individual rights.** [189] This follows from the legal fiction in article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention which privileges recognised environmental associations. According to that provision, both in the English and French language versions, authentic pursuant to article 22 of the Aarhus Convention, and in the German translation as set out here, in States – such as Germany – under whose legislation access to justice is conditional on maintaining the impairment of a right, any non-governmental organisation meeting the requirements specified in article 2, paragraph 5, of the Aarhus Convention shall be deemed to have rights affording it access to justice. A non-governmental organisation is regarded as falling within the scope of article 2, paragraph 5, of the Aarhus Convention if it promotes environmental protection and meets any requirements under national law. In accordance with this fiction, recognised environmental associations such as the applicant are deemed irrebuttably, on the basis of the Convention, to have rights capable of satisfying any procedural condition for access to justice established under national law. [190] See Case C-115/09 Trianel [2011] ECR I-0000, paragraph 40 et seq., for a similar interpretation of the almost identical provision set out in the third paragraph of Article 10a of Direc-

			tive 85/337, as inserted by Directive 2003/35. [191] Article 9, paragraph 2, of the Aarhus Convention does not provide for any restrictions depending on the origin of a legal rule (whether the rule derives from EU law or national law). Moreover, a restriction of that kind would be contrary to the objective of the Aarhus Convention, that is, to ensure a wide access to justice. Consequently, the provisions whose impairment may be challenged by environmental organisations pursuant to article 9, paragraph 2, of the Aarhus Convention also includes provisions which originate simply in national law. [192] To the same effect, see Federal Ministry of the Environment, Nature Conservation, and Nuclear Safety, Datenblatt Nr. 17/16071, Proposal for an Act amending the Environment Appeals Act and other environmental legislation (version: 30 May 2012), p. 52, http://www.bmu.de/files/pdfs/allgemein/application/pdf/umwrg_aendg_entwurf_bf.pdf [..] [200] cc) **Article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention is directly effective in Germany.** [201] See Kleinschnittger, l+E 2011, p. 280, at pp. 285-6. [202] The domestic law effect of an international treaty follows exclusively from the domestic law instrument providing for such. This is also the case in relation to treaties in which the parties thereto have undertaken to ensure the domestic law effect. [203] See article 59, paragraph 2, first sentence, of the Basic Law and the judgment of the Federal Constitutional Court of 22 October 1986 in Case 2 BvR 197/83, reported BVerfGE 73, p. 339, at paragraph 98 as reported in juris. [204] Consequently, the domestic effect of the Aarhus Convention follows from the Assenting Act to this Convention of 9 December 2006. The domestic effect of an international treaty achieved in this manner only results in a provision of the treaty having direct effect, that is, establishing rights enforceable both by and against the individual concerned, if, having regard to its wording, purpose and substance, the provision is appropriate and sufficiently precise to take effect in the same manner as a provision of domestic law, i.e. it does not require further legislative specification. Whether this is the case must be determined by interpretation.

			[205] See judgments of the Federal Administrative Court of 16 October 1990 in Case 1 C 15.88, reported BVerwGE 87, p. 11, at paragraph 9 as reported in juris, and 13 December 2010 in Case 7 B 64.10, reported NVwZ 2011, p. 752, at paragraph 9 as reported in juris. See also Geiger, Grundgesetz und Völkerrecht, 3rd edition 2002, p. 175. [206] In principle, those conditions are the same as those which govern whether a provision of an EU Directive which has not been implemented or not been implemented within the period prescribed has direct effect. [207] If one takes article 9, paragraphs 2 and 3, of the Aarhus Convention as a whole, this provision allows Convention States considerable discretion in determining what constitutes an impairment of a right, the conditions for the admissibility of a complaint and the bodies with whom such complaints may be lodged. However, the present case does not concern whether the entire scheme of the Aarhus Convention on access to justice has direct effect. In principle, article 9, paragraphs 2 and 3, of the Aarhus Convention has already been implemented in German law in the Environmental Appeals Act. Instead, the present case simply concerns whether the provisions of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention apply by way of supplement. These two sentences do not allow a Contracting Party any discretion in their implementation. They provide, first, that the interest of any non-governmental organisation meeting the requirements referred to in article 2, paragraph 5, of the Aarhus Convention shall be deemed sufficient and, second, that such organisations shall also be deemed to have rights capable of being impaired. Thus, they establish precise rules which, contrary to the view of the intervening party, are not subject to further conditions and do not require further specification. To that extent, therefore, the same applies here as has been established as regards the direct effect of the almost identical provisions of Article 11(3) of Directive 2011/92. [208] See Case C-115/09 Trianel [2011] ECR I-0000, paragraph 55 et seq. (on the third paragraph of Article 10a of Directive 85/337, as inserted by Directive 2003/35). [209] However, direct effect of an international treaty is precluded also if the national legislation assenting to the treaty makes provision to that effect or the Contracting State makes a reservation of that kind when ratifying the treaty. [210] See Geiger, Grundgesetz und Völkerrecht, 3rd edition 2002, p. 175, and Nettesheim in

			Maunz and Dürig (eds), Grundgesetz, last updated: January 2012, Article 59, points 183-4. [211] In the present case, the Assenting Act of 9 December 2006 contains no provision to that effect and, moreover, the Federal Republic of Germany made no reservation of that kind on ratifying the Aarhus Convention. [212] On the last point, see the official notice of 8 August 2007 concerning the entry into force of the Aarhus Convention (BGBl. II, p. 1392). [213] dd) **The provisions of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention – with direct effect as set out above – supplement section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act to the effect that recognised environmental associations may also challenge a violation of provisions of national environmental law not protecting third party interests. To that extent, the substantive scope of section 2 of the Environmental Appeals Act is enlarged.** [214] Even if the legislature must be regarded as having taken a different view on the substance of the Aarhus Convention, in particular on the meaning of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention, in adopting the Assenting Act of 9 December 2006, it accorded the meaning and scope of the Aarhus Convention – as objectively determined – (see section (bb) above) domestic law effect. No use was made of the possibility to assign a different meaning to the Convention by providing for a reservation of that kind in the instrument giving domestic effect thereto. [215] The provisions of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention supplement section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act as the latter provisions do not take precedence over the former. The Environmental Appeals Act has the rank of a federal law. The same rank is accorded to the Aarhus Convention as a result of the Assenting Act of 9 December 2006. [216] See the judgment of the Federal Constitutional Court of 4 May 2011 in Case 2 BvR 2333/08, reported BVerfGE 128, p. 326, at paragraph 87 as reported in juris with further references, and of the Federal Administrative Court of 16 December 1999 in Case 4 CN 9.98, reported BVerwGE 110, p. 203, at paragraph 23 as reported in juris. See also Nettesheim in Maunz and Dürig (eds), Grundgesetz, last updated: January 2012, Article 59, points 183-4.

			[217] Nor can section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act take precedence by reference to general legal principles according to which the act which is later in time takes precedence over earlier legislation and specific enactments take precedence over more general rules. In those circumstances, it is unnecessary to consider whether, conversely, the provisions of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention take precedence simply because in relation to 'competing' provisions of domestic law rules established by virtue of international law must be regarded as a lex specialis. [218] To that effect, Bleckmann, DÖV 1979, p. 309, at p. 312; Geiger, Grundgesetz und Völkerrecht, 3rd edition 2002, p. 175; Stern, Das Staatsrecht der Bundesrepublik Deutschland, Volume I, 2nd edition 1984, p. 482. A more restrictive view is taken by Rojahn in von Münch and Kunig (eds), Grundgesetz, Volume 2, 5th edition 2001, Article 59, point 38d. [219] In relation to the Aarhus Convention (Assenting Act of 9 December, promulgated on 15 December and which entered into force on 16 December 2006 with the Aarhus Convention itself entering into force on 15 April 2007), the Environmental Appeals Act (Law of 7 December, promulgated on 14 December and which entered into force on 15 December 2006) is not the act which is later in time but that which is earlier. Moreover, section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act cannot be regarded as a lex specialis in relation to the provisions of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention. In enacting the Environmental Appeals Act, it was the express objective of the legislature to adopt a measure which conforms to the requirements of the Aarhus Convention and which neither contradicts nor overrides this. [220] Admittedly, mistaken as to the scope of article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention and the third paragraph of Article 10a of Directive 85/337, as inserted by Directive 2003/35, in the Environmental Appeals Act the legislature sought to restrict the standing of environmental associations to situations in which individual public law rights were impaired. The objective of the Environmental Appeals Act was not only to implement the second and third paragraphs of Article 10a of Directive 85/337, as inserted by Directive 2003/35, but also to implement the Aarhus Convention. [221] See, for example, BT-Drucksache [parliamentary printed paper] 16/2495, p. 1, 16/2497,

			p. 7 and 16/2931, pp. 4-5. [222] By means of the Environmental Appeals Act (and further parallel laws), the legislature expressly sought to implement the Aarhus Convention 'in full'. This clearly follows from the parliamentary printed paper 16/2931. In relation to amendments to the Environmental Appeals Act proposed by the Bundesrat, it is stated on page 5 of that document: [223] 'The amendments proposed by the Bundesrat in relation to the legislative proposal put forward by the Federal Government must be assessed to determine whether they are compatible with the EC Directive and the UN/ECE Convention (= Aarhus Convention, explanation added by the Court) which require implementation. Omissions in implementation must be avoided.' [224] It follows from that statement that had the legislature known of the unintentional conflict between section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act, on the one hand, and article 9, paragraph 2, subparagraph 2, second and third sentences, of the Aarhus Convention, on the other, it would have favoured the solution conforming to the Convention, amenable to the principles of international law. [225] On the notion whereby legislation should be interpreted in a manner amenable to the principles of international law see the judgment of the Federal Constitutional Court of 14 October 2004 in Case 2 BvR 1481/04, reported BVerfGE 111, p. 307, at paragraph 48 as reported in juris, and of the Federal Administrative Court of 16 December 1999 in Case 4 CN 9.98, reported in BVerwGE 110, p. 203, at paragraph 23 as reported in juris. See further Rojahn in von Münch and Kunig (eds), Grundgesetz, Volume 2, 5th edition 2001, Article 24, points 2-3. [226] This is confirmed by the ministry proposal for an amendment to the Environmental Appeals Act in response to the Trianel judgment of the Court of Justice of the European Union (version: 30 May 2012), which provides for the deletion of the restrictive phrase 'establish individual rights' in both section 2 (1) no. 1 and section 2 (5), first sentence, no. 1 of the Environmental Appeals Act. [227] See http://www.bmu.de/files/pdfs/allgemein/application/pdf/umwrg_aendg_entwurf_bf.pdf [228] ee) The Aarhus Convention applies in the present case [..].

12	Administrative Court of Düsseldorf, decision dated 3 July 2012, docket no. 3 L 316/12	Application to restore the suspensive effect of the action against an authorisation notice for an animal husbandry facility	Margin note 14 et seq: **It appears doubtful that the provisions claimed to have been infringed also include provisions which confer rights on individuals as section 2 (1) no. 1 of the Environmental Appeals Act further requires, but in view of the facts of the case this question need not be clarified because the controlling provisions are anchored in EU law. The environmental law action by the association which is designed to (also) serve to protect third parties contravenes Article 10a of the EIA Directive to the extent that it seeks to assert infringements of provisions on the implementation of EU law.** [15] See, Federal Administrative Court (Bundesverwaltungsgericht - BVerwG), judgment dated 20 December 2011, loc. cit. [16] **As the Court of Justice of the European Union stated in its judgment dated 12 May 2011 (Case C-115/09, Trianel - NJW 2011, 2779), Article 10a of the EIA Directive precludes rules which do not permit environmental protection organisations within the meaning of Article 1(2) of the EIA Directive to rely before the courts, in an action contesting a decision authorising projects within the meaning of Article 1(1) of the EIA Directive, on the impairment of rules of EU environmental law, solely on the ground that those rules protect only the interests of the general public and not the interests of individuals. Having regard to the primacy of EU law, in the application of section 2 (1) no. 1 of the Environmental Appeals Act, the restrictive requirement that only those rules which confer rights on individuals may be claimed as having been infringed must therefore be excluded to the extent environmental law provisions for the implementation of EU law are involved.** The latter applies in any case with respect to the provisions of the "Administrative Authority's Regulation on the Establishment of Nature Reserve "E" in the City of L and the Community L1, Administrative District L" of the regional government E1 dated 14 June 2005 00.0.00.00.00 (hereinafter: "NSG Regulation") being claimed by the applicant as having been infringed. According to section 1 of the NSG Regulation, the establishment of the nature reserve serves to protect the areas XX-000-000 "X (partial area of NSG E)" and XX 1111-111

			"NSG L2, partial areas only, with expansion" registered under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ EC no. L 305, p. 42) (Habitats Directive) as well as the European "Bird Reserve, XX-2222-222 V" declared by the government of the State of North Rhine Westphalia under Directive 79/409/EEC.
13	Administrative Court of Kassel, decision dated 2 August 2012, docket no. Az. 4 L 81/12.KS	Challenge by an environmental association to a water law authorisation	Margin note 87: **The other requirement set out in section 2 (1) no. 1 of the Environmental Appeals Act that the provision can also confer rights on individuals is not applicable due to the infringement of Article 10a of the EIA Directive (Directive 85/337/EEC of 5 July 1985 in the version of Directive 2003/35/EC of 26 May 2003 and Directive 2009/31/EC of 23 April 2009), at least to the extent environmental law provisions based on EU law** (which include the provisions on the necessity of an environmental impact assessment in accordance with the Act on the Assessment of Environmental Impacts (Gesetz über die Umweltverträglichkeitsprüfung - UVPG) and an assessment of the implications for the site under the Federal Nature Conservation Act) are affected (CJEU, judgment dated 12 May 2011 - C-115/09 - Trianel, juris; VGH Mannheim, judgment dated 20 July 2011 – 10 S. 2102/09 -, NuR 2012, 204; Hoppe/Beckmann, loc. cit., section 2 margin note 20 et seq., 22; but see also VGH Hesse, judgment dated 16 September 2009 – 6 C 1005/08.T -, ZUR 2010, 46, but replaced by CJEU judgment dated 12 May 2011; see also the draft bill to amend the Environmental Appeals Act and other environmental law provisions dated 30 May 2012).
14	Administrative Court of Halle, judgment dated 28 August 2012, docket no. 4 A 51/10	Challenge by an environmental association to an approval under imission control law for an animal husbandry facility	Margin note 316 et seq: **However, the plaintiff's standing to take legal action extends beyond the language of section 2 (1) no. 1 of the Environmental Appeals Act to also include provisions of environmental law that do not serve to protect third parties, where such provisions have their origin in EU law.** Restricting the standing to take legal action of recognised environmental protection organisations to environmental provisions serving to protect third parties contravenes 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 EC No. L 175 p. 40) (EIA Directive) in the version of Directive 2003/35/EC of the European Parliament and of the Coun-

			cil of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ. EC No. L 156 p. 17) (Public Participation Directive). **Until the necessary amendments have been made to the Environmental Appeals Act, recognised environmental protection organisations may censure infringements of environmental provisions flowing from EU law directly on the basis of Article 10a of the EIA Directive (CJEU, judgement dated 12 May 2011 – Case C-115/09 – juris; BVerwG, judgment dated 29 September 2011 – BVerwG 7 C 21.09 – juris margin note 27 et seq.; VGH Mannheim, judgment dated 20 July 2011 – 10 S 2102/09 – juris margin note 67; OVG Münster, judgment dated 1 December 2011 – 8 D 58/88.AK – loc. cit. margin notes 99 – 109).** [317] According to this, the plaintiff is also entitled to assert the lack of compatibility with the site under the Habitats Directive and thus an infringement of section 34 (2) of the 2002 Federal Nature Conservation Act (Bundesnaturschutzgesetz - BNatSchG) (section 34 (2) of the 2009 Federal Nature Conservation Act) or section 45 of the 2004 Nature Conservation Act of the State of Saxony Anhalt (Naturschutzgesetz - NatSchG LSA). The aforementioned provisions have their origin in EU law, specifically in Council Directive 92/43/EECof 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ EC no. L 206, p. 7) (Habitats Directive). The plaintiff is furthermore entitled to assert an infringement of the provisions on the protection of species generally, which also fall within the scope of the Habitats Directive, under section 42 et seq. of the 2002 Federal Nature Conservation Act (section 44 et seq. of the 2009 Federal Nature Conservation Act).
15	Administrative Court of Hanover, judgment dated 20 September 2012, docket no. 12 A 5497/10	Challenge by an environmental association to an approval under imission control law to expand a quarry	Margin note 24: **With respect to the potential infringement of legal provisions serving the protection of the environment, environmental associations under Article 9(2) of the Aarhus Convention have standing to take legal action even in those cases where the provisions do not serve the implementation of European law (following OVG Münster, judgment dated 12 June 2012 - 8 D 38/08.AK, juris).**

16	Administrative Court (Verwaltungsgericht - VG) of Munich, judgment dated 9 October 2012, docket no. M 1 K 12.1046	General action for satisfaction by an environmental association to amend an air quality maintenance plan	1.2. The plaintiff also has standing to take legal action. National procedural law does not, however, recognise an association's standing to take legal action with respect to air quality maintenance planning. Specifically, the Environmental Appeals Act, as a "deviating statutory provision" within the meaning of section 42 (2) of the Rules of Procedure of the Administrative Courts, does not recognise any corresponding standing to take legal action on the part of an association because an air quality maintenance plan does not constitute a "decision" within the meaning of section 1 (1) first sentence of the Environmental Appeals Act. **Nevertheless, as a recognised environmental protection association, the plaintiff's standing to take legal action is to be affirmed in view of the decision of the Court of Justice of the European Union (CJEU) dated 8 March 2011 (C-240/09, NVwZ 2011, 673 et seq.).** According to this decision, "[..] the referring court [has] to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of the Aarhus Convention and the objective of effective judicial protection of the rights conferred by EU law, so as to enable an environmental protection organisation [..] to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law [..]." For the court of decision, this means that administrative procedural law, specifically section 42 (2) of the Rules of Procedure of the Administrative Courts, has to be interpreted so as to enable an environmental protection organisation to challenge before a court a decision taken following administrative proceedings liable to be contrary to EU environmental law (see also, VG Wiesbaden dated 10 October 2011 4 K 757/11.WI(1); dated 16 August 2012 4 K 165/12.WI). With the aforementioned decision, the Court of Justice of the European Union has paved the way for reasonably opening up in the spirit of protecting individual rights, access to judicial review proceedings in Germany, as well; non-governmental organisations are granted the opportunity to seek judicial review with respect to whether the Member State has implemented Community law (Radespiel, EurUP 2011, 238 et seq.). Thus, national procedural law is to be more broadly interpreted in those cases where EU law has substantially set procedural and substantive environmental protection law (Berkemann, DVBl. 2011, 1253 et seq.).

17	Higher Administrative Court (*Oberverwaltungsgericht* - OVG) of Saarland, decision dated 11 October 2012, docket no. 2 B 276/12	Judicial review proceedings of a recognised environmental association against a development plan	Margin note 12: **The Court assumes in the applicant's favour that section 2 (1), of the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz - UmwRG), despite the lack of any opening clause for other deviating statutory provisions in section 47 (2) first sentence of the Rules of Procedure of the Administrative Courts (Verwaltungsgerichtsordnung - VwGO) corresponding to the provision on standing to take legal action (section 42 (2) of the Rules of Procedure of the Administrative Courts), as equal-ranking subsequent federal law, can to the extent specified therein, generally be interpreted to give recognised environmental associations standing to lodge an application for judicial review proceedings.** Accordingly, the question of whether the second and third sentences of Article 10a(3) 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 (EIA Directive) presently have direct effect at the national level in that regard is irrelevant here.