Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:

- Law 29/1998, of 13 July, on administrative judicial procedure.
- Law 1/2000, of 7 January, on civil judicial procedure.
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

For administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit for filing an administrative review (Art. 122, Law on the Common Administrative Procedure).

For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.

After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of administrative review includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on

the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of environmental decisions based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review. However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:

- Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Decisions of administrative bodies not having a hierarchical superior (for instance, ministers in the national or governments of the Autonomous Communities)
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Aarhus Law, NGOs meeting certain criteria[2] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of the administrative procedure, nor to make comments or participate in hearings. In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

5) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial review phase. It is even possible to bring new grounds/arguments that were not used during the administrative review phase.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a "tutela judicial efectiva" (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.

7) How is the notion of "timely" implemented by the national legislation?

The right to "tutela judicial efectiva" in Article 24 of the Spanish Constitution also implies the right to a process without undue delays and to the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long and when a judgment is issued the damage has been done.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures. If the challenge is through administrative review the competent body to decide on that review can suspend ex officio or at the request by the appellant the challenged administrative decision. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happen:

1. execution might cause damage which cannot be repaired, or their reparation would be very difficult.
2. the appealed decision is based on a violation of fundamental human rights which makes the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged environmental decision. An injunction or interim measure (*medidas cautelares* - provided for in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

There are no special rules applicable to each sector apart from the general national provisions.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).

The word “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise *actio popularis* is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:

- Law 29/1998, of 13 July, on administrative judicial procedure
- Law 1/2000, of 7 January, on civil judicial procedure
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction, before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1

October, on the Common Administrative Procedure of Public Administrations.

To file an administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published, or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, "administrative silence" comes into play. and then there is no time-limit for filing an administrative review (Art. 122, Law on the Common Administrative Procedure).

For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.

After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of administrative review includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant's requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of SEA decisions based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review. However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because in there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:

- decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Decisions of administrative bodies not having a hierarchical superior
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Aarhus Law, NGOs meeting certain criteria[4] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of the SEA procedure, nor to make comments or participate in hearings. According to Law on Environmental Assessment there are two opportunities for the public

to make comments in a SEA procedure. In the first, the concerned public can submit comments on the scoping document for the environmental report within a period of 45 days. The second opportunity to submit comments is open to the public in general and also the concerned public and takes place once the promoter has prepared the draft environmental report, then the substantive body opens this consultation for a period of 45 days.

In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules applicable to SEA procedures apart from the general national provisions.

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures including environmental plan procedures. If the challenge is through administrative review the competent body able to decide on that review can suspend the challenged plan or programme ex officio or at the request by the appellant. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed plan could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happens:

1. the execution might cause damage which cannot be repaired, or their reparation would be very difficult
2. the appealed plan is based on a violation of fundamental human rights which turns the act null.

In judicial reviews the judge or court can order the implementation of the challenged plan to be stopped. An injunction or interim measure (*medidas cautelares* - provided in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the "loser party pays" principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).

The word. "prohibitive" is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise *actio popularis* is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Article 17 of the Aarhus Law requires that public participation procedures are undertaken for plans and programmes on waste, batteries, air quality, packaging and packaging waste, among other things. Thus, when those procedures are not carried out or are carried out in violation of the requirements of the procedures provided by the Aarhus Law, the decisions, acts or omissions in that regard can be challenged.

The main law regulating access to justice in environmental matters is the Aarhus Law. Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to those plans or programmes. The following laws also apply to judicial procedures to defend the environment which also apply to those plans:

- Law 29/1998, of 13 July, on administrative judicial procedure.
- Law 1/2000, of 7 January, on civil judicial procedure.
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

To file an administrative review, the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit to file an administrative review (Art. 122, Law on the Common Administrative Procedure).

For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.

After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of administrative review in the case of those plans includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of decisions on plans based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decision, act or omission bringing to an end the administrative remedies are:

- Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Decisions of administrative bodies not having a hierarchical superior
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Aarhus Law, NGOs meeting certain criteria[6] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of said plans or programmes, or to make comments or participate in hearings.

In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules applicable to environmental plans apart from the general national provisions.

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures including said plans and programmes. If the challenge is through administrative review, the competent body able to decide on that review can suspend the challenged plan or programme *ex officio* or at the request by the appellant. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed plan could cause to the public interest or to a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happens:

1. the execution might cause damages which cannot be repaired, or their reparation would be very difficult
2. the appealed plan is based on a violation of fundamental human rights which turns the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged plan. An injunction or interim measure (*medidas cautelares* - provided for in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the "loser party pays" principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law

1/2000, of 7 January, on Civil Judicial Procedure (arts. 241-246).

The word. “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise *actio popularis* is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[7]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to plans such as those on waste, batteries, air quality, packaging and packaging waste, among other things. The following laws also apply to judicial procedures to defend the environment which also apply to those plans:

- Law 29/1998, of 13 July, on administrative judicial procedure
- Law 1/2000, of 7 January, on civil judicial procedure
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

To file an administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit to file an administrative review (Art. 122, Law on the Common Administrative Procedure).

For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.

After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

The form in which the plan or programme is adopted makes a difference in terms of legal standing.

Administrative review (Article 112.1, Law on the Common Administrative Procedure) and judicial review (Article 1, Law on Administrative Judicial Review) can be filed by concerned parties in the terms of Article 4 of Law on the Common Administrative Procedure and by NGOs that can exercise *actio popularis* when the plan has been adopted by an administrative act. If the plan or programme has been adopted by a regulatory act -a Royal Decree when it is the State level or a Decree at the Autonomous Community level or an ordinance at the municipal level - it can only be challenged through judicial review (Article 112.3, Law on the Common Administrative Procedure and Article 1, Law on Administrative Judicial Procedure) by those having an interest.

If the plan or programme has been adopted by a legislative act – i.e. Law or Legislative Decree - it has to be challenged through an unconstitutionality review before the Spanish Constitutional Court. This challenge has to be based on a violation of constitutional provisions. Standing for this review is limited to (Article 32, Organic Law 2/1979, of 3 October, on the Constitutional Court[8]):

1. The Head of Government
2. The Ombudsman
3. 50 Members of the Spanish Parliament
4. 50 Senators.

If the plan or programme adopted by Law could affect the scope of an Autonomous Community, standing is extended to the collegiate bodies of the Autonomous Community (executive power) and to its Assemblies or Parliamentary bodies if there is an agreement to challenge it.

The same applies to plans or programmes adopted through Autonomous Community laws.

In addition, judges and courts can file by own motion or at the request of a party in a judicial review a "question of unconstitutionality" against a plan or programme approved by a legislative act when the judge or court considers that this Law applies to the case and it may be contrary to the Spanish Constitution (Article 37, Law on the Constitutional Court).

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of administrative review in the case of these plans or programmes includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant's requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of decisions on plans based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission related to those plans or programmes does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:

- Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Decisions of administrative bodies not having a hierarchical superior
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

According to the Aarhus Law, NGOs meeting certain criteria[9] can exercise *actio popularis*. Thus, these entities are

not required to participate in the public consultation phase of said plans or programmes, or to make comments nor to participate in hearings.

In addition, in cases where no *actio popularis* is possible, the rule is that to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

6) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial review phase. It is even possible to bring new grounds/arguments that were not used during the administrative review phase.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Article 24 of the Spanish Constitution recognizes the right to a fair and equitable trial as a human right integrated within the fundamental right to a "tutela judicial efectiva" (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.

8) How is the notion of "timely" implemented by the national legislation?

The right to "tutela judicial efectiva" in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters as it is for said plans and programmes are often too long and when a judgment is issued the damage has been done.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures such as those related to said plans and programmes. If the challenge is through administrative review the competent body able to decide on that review can suspend *ex officio* or after the request by the appellant the challenged administrative decision. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happen:

1. the execution might cause damages which cannot be repaired, or their reparation would be very difficult.
2. the appealed decision is based on a violation of fundamental human rights which makes the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged environmental decision. An injunction or interim measure (*medidas cautelares* - provided in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

There are no special rules applicable to each sector apart from the general national provisions.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the "loser party pays" principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law

1/2000, of 7 January, on Civil Judicial Procedure (arts. 241-246).

The Spanish legislation do not contain any mention of the requirement that costs should not be prohibitive. However, as this is contained in the Aarhus Convention and this Convention is part of the Spanish legal order, this requirement has to be respected.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[10]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The main law regulating access to justice in environmental matters, including legislative and regulatory acts to protect the environment which transpose EU environmental legislation, is Law 27/2006 of 18 July on the rights on access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to some normative acts of a regulatory nature transposing EU environmental legislation, but does not apply to legislative acts. The following laws apply to judicial review procedures to challenge normative acts of a regulatory nature transposing EU environmental legislation:

- Law 29/1998, of 13 July, on administrative judicial procedure.
- Law 1/2000, of 7 January, on civil judicial procedure.
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

Most of EU environmental legislation is transposed in Spain by:

1. Acts of a legal or legislative nature: Laws adopted by the Spanish Parliament, Legislative Decrees and Legislative Royal Decrees adopted by the Council of Ministers. At the Autonomous Community level, EU legislation may be transposed by Laws adopted by the regional assemblies or parliaments, or by Legislative Decrees adopted by the regional government.
2. Acts of a regulatory nature: Royal Decrees adopted by the Council of Ministers or Ministerial Orders adopted by the competent minister. At the Autonomous Community level, EU legislation may be also transposed by Decrees adopted by the President of the Autonomous Community, or by orders or resolutions of the competent regional minister. At the municipal level this is done by a municipal ordinance adopted by the municipal chamber comprised by the mayor and counsellors.

Laws cannot be directly challenged or appealed before a court of law by natural or legal persons. Laws can only be challenged through the unconstitutionality review before the Spanish Constitutional Court. This challenge has to be based on a violation of constitutional provisions. Standing for this review is limited to (Article 32, Organic Law 2/1979, of 3 October, on the Constitutional Court[11]):

1. The Head of Government.
2. The Ombudsman.
3. 50 Members of the Spanish Parliament.
4. 50 Senators.

If State laws could affect the scope of competence of an Autonomous Community, standing is extended to the collegiate bodies of the Autonomous Community (executive power) and to their Assemblies or Parliamentary bodies if there is an agreement to challenge it. The same applies to Laws adopted by Autonomous Community Parliaments.

The deadline to challenge a Law or act of a legislative nature before the Constitutional Court is 3 months after its publication in the official journal. However, when the unconstitutionality review is filed by the President of the Government or the executive or by presidential bodies of the Autonomous Communities this deadline may be 9 months under certain conditions.

In addition, in the course of a procedure against an administrative act in which a Law that transposes EU environmental legislation is under question, judges and courts can file of their own motion or at the request of a party in that judicial review a "question of unconstitutionality" when the judge or court considers that that Law applies to the case and it may be contrary to the Spanish Constitution (Article 37, Law on the Constitutional Court).

Act of a regulatory nature transposing EU environmental legislation can only be challenged through judicial review (Articles 112.3, Law on the Common Administrative Procedure and Article 1, Law on Administrative Judicial Procedure) by the concerned public, i.e. those with an interest in the terms of the administrative judicial review. The deadline to file it is of two months after publication of the challenged regulatory act in the corresponding official journal.

After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right of access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

First instance judges or courts can review the procedural and substantive legality of acts of a regulatory nature based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

The judge or court can rule the regulatory act contrary to Law and it can annul in its totality or partially the challenged regulatory act and can order to modify it.

In the case of challenges to legislative nature, if the Constitutional Court declares the act unconstitutional, it also has to declare that act null as well as those acts to which it has to be extended because there are connections, or which are consequential on it. The Constitutional Court can base the unconstitutionality in the infringement of any constitutional provision, even those not alleged in the procedure.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

When challenging acts of a legislative and a regulatory nature, judicial review is the only means of redress. Therefore, there is no requirement to exhaust administrative review procedures.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to challenge acts of a legislative or regulatory nature transposing EU environmental legislation, there is no requirement to have participated in the public consultation before the adoption of those acts in order to file a judicial review against it.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures against acts of a regulatory nature which transpose EU environmental legislation. It is in the writ of appeal or in the lawsuit against that regulatory act to be filed before a judge or court that the injunction or interim measure has to be requested.

In judicial reviews the judge or court can order the implementation of regulatory acts to be stopped. In such cases, the judicial Secretary has to order the publication of such a decision.

There are no special rules applicable when requesting injunctions or interim measures in the course of a judicial review against an act of a regulatory nature transposing EU environmental legislation. Thus, Articles 129-136 providing the procedure for interim measures of the Law on the Administrative Judicial Review apply.

The admission of an unconstitutionality review does not lead to suspension of the implementation of the challenged legal provisions. It can only be suspended by the Constitutional Court when the President of the Government submits a Law or an act of a legal nature from an Autonomous Community and expressly requests in the lawsuit such a suspension of the entry into force and implementation of the challenged legal act (Article 30 Organic Law of the Constitutional Court). However, the Constitutional Court has to ratify or cancel the suspension within a period of five months.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

The procedures before the Constitutional Court are free, including the unconstitutionality review (Article 95., Organic Law on the Constitutional Court). However, the Court can impose the costs of a procedure on the party or parties that make ungrounded allegations or when it considers there was bad faith in the procedure or abuse of the law. In those cases the Constitutional Court can also impose a fine ranging from 600 to 3,000 euros.

For cases against acts of a regulatory nature transposing EU environmental legislation, there are no rules on the costs. Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services.

In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the losing party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).

Spanish legislation does not contain any mention to the requirement that costs should not be prohibitive. However, as this is contained in the Aarhus Convention and this Convention is part of the Spanish legal order, this requirement has to be respected.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[12]?

It is important to note at the outset that, in Spain, the decision to file a preliminary ruling before the CJEU is a decision that exclusively belongs to the judge or court but that the parties in a procedure can request the judge or court to file it.

A legal challenge against an EU regulatory act can be brought within the course of a judicial review against an administrative act or regulatory act which is an act implementing the EU regulatory act. Then, the parties can request the judge or court to file it although, as mentioned earlier, it is for the judge to decide whether or not to do it. Normally, the parties can make such a request in their lawsuit or allegations in a part of the process called “otrosí”. When the judge or court has doubts on the validity of the EU regulatory act has to file the preliminary ruling.

[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters*

[2] These criteria are:

1. Their statutes include as the association’s goal the protection of the environment or of any of its elements.

2. The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
3. A geographical connection (established in their statutes) with the area affected by the act or omission.

[3] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[4] These criteria are:

1. Their statutes include as the association's goal the protection of the environment or of any of its elements.
2. The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
3. A geographical connection (established in their statutes) with the area affected by the act or omission.

[5] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[6] These criteria are:

1. Their statutes include as the association's goal the protection of the environment or of any of its elements.
2. The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
3. A geographical connection (established in their statutes) with the area affected by the act or omission.

[7] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.

[8] Organic Law 2/1979 of 3 October on the Constitutional Court (BOE num. 239, of 05.10.1979).

[9] These criteria are:

1. Their statutes include as the association's goal the protection of the environment or of any of its elements.
2. The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
3. A geographical connection (established in their statutes) with the area affected by the act or omission.

[10] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*,ECLI:EU:C:2017:774.

[11] Organic Law 2/1979 of 3 October on the Constitutional Court (BOE num. 239, of 05.10.1979).

[12] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*,ECLI:EU:C:2017:774

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