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?

Standing rules are the same for administrative review and administrative court review and for all environmental decisions, regardless of which exact legal act was the basis for the decision. Spatial planning (including challenges to the SEAs related to such plans) is an exception. Certain spatial planning decisions may be challenged by anyone on the grounds of being contrary to public interests (*actio popularis*). The plans include local (municipal level) spatial plans as well as the national designated plans. The latter type is used for building construction work, which has significant spatial impact and whose chosen location or whose functioning elicits significant national or international interest. A national designated spatial plan is prepared, above all, to express interests which transcend the boundaries of individual counties in the fields of national defence and security, energy supply, the transport of gas, waste management or for the expression of such interests in public water bodies and in the exclusive economic zone.

The general standing rules can be summarized as follows:

- *Standing of natural persons and private legal entities other than environmental NGOs, e.g. regular NGOs, companies etc.* Standing is based on violation of subjective rights including the right to an environment that meets health and well-being needs, as provided by the General Part of the Environmental Code Act.
- *Standing of environmental NGOs, i.e. the NGOs that meet the national definition*. Standing is based on the violation of subjective rights but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO, see 1.4.3 for the national definition of “environmental NGO”.
- *Ad hoc groups (groups that are not legal entities).* In general, ad hoc groups do not have standing. However, certain ad hoc groups qualify as environmental NGOs, see 1.4.3 for the national definition of “environmental NGO”.
- *Foreign NGOs.* General criteria apply, that is, the criterion is violation of subjective rights but the violation of rights is presumed if the NGO meets the national definition of environmental NGO and provided that the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the organisation.
- *Other.* State authorities may not challenge the activity of other state authorities, as they are not separate legal entities. However, local municipalities may challenge activities of other public authorities if their rights are violated. The same applies to other legal persons under public law, e.g. universities, public foundations etc.

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public

notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body,
- you seek elimination of illegal effects of an administrative act,
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective if the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As a general rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

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

As noted above, judicial review of discretionary decisions is limited. The court cannot start to use the discretion given to authorities by laws but can only check whether these discretionary powers were used lawfully. This means that if significant mistakes in using discretion were made, the court cannot rectify this and make a new, fair and lawful decision itself. The court is also barred from re-evaluating value judgments of authorities.

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

General rules apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is in the discretion of participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants in the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant’s interests remains unrecognized because of the participant’s lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are cured. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those

views, and to contest the other participants' views or to support the same.

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

There are no rules specific to the decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within reasonable period of time.

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?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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[2]

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?

Standing (both for administrative review as well as judicial review) related to procedures subject to the SEA Directive depends on the nature of the plan or programme for which the SEA was carried out:

- If the SEA was carried out for a local (municipal) spatial plan or national designated spatial plan, anyone can challenge the spatial plan adopted together with its SEA on the grounds that it contravenes public interests (*actio popularis*);
- In all other cases, the plan or programme and its SEA can only be challenged if a) the decision is considered to be an individual administrative act, i.e. it creates, terminates or changes subjective rights, and b) it breaches the right of the person bringing the challenge (breach of rights is presumed for environmental NGOs). The overwhelming majority of plans and programmes outside the above-mentioned spatial plans that are subject to SEA are not individual administrative acts and therefore cannot be challenged in administrative review or judicial review procedures.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner).

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body;
- you seek elimination of illegal effects of an administrative act;
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As a general rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

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?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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[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?

Standing related to administrative and judicial review of adopted plans and programmes depends on the nature of the plan or programme:

- For plans and programmes that are considered administrative acts, i.e. which create, terminate or change the individual rights of any person, standing is awarded to those persons whose individual subjective rights have been breached (breach of rights is presumed for environmental NGOs). Plans and programmes may also be considered to be administrative acts only in part. Plans and programmes related to environment belonging to this category include spatial plans for small areas (detailed spatial plans) which are not subject to SEAs and protection rules for conservation areas, for example. The following questions and answers are relevant only for this category of plans and programmes.
- The majority of plans and programmes that are subject to Article 7 of the Aarhus Convention are not considered administrative acts but internal administrative documents. As these plans and programmes do not have a direct effect on anyone's rights, they can also not be challenged either by means of administrative nor judicial review. Therefore, the following questions and answers are not relevant to this category.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner).

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court (usually up to two months).

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body;
- you seek elimination of illegal effects of an administrative act;
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers "purposefulness" of the challenged decision. The courts are not allowed to reconsider purposefulness and value judgements of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

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?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of one of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations except state fee 15 euros attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[4]

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?

For plans and programmes that are considered administrative acts, i.e. which create, terminate or change the individual rights of any person, standing is awarded to those persons whose individual subjective rights have been breached (breach of rights is presumed for environmental NGOs). Plans and programmes may also be considered to be administrative acts only in part. Plans and programmes that are not administrative acts do not have a direct effect on anyone's rights. Such plans and programmes cannot be challenged. Therefore, the following questions and answers are not relevant for this category.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such

cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner). Note that the obligation may arise also from the Community law, as was provided by CJEU in case C-237/07 (*Janecek*).

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body;
- you seek elimination of illegal effects of an administrative act;
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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 for the plan or programme is immaterial. According to the long-established case law of the Supreme Court, classification of decisions as administrative acts is not dependent on what the act is called by the authorities but depends on their legal effects. As a practical example, detailed protection rules for nature conservation areas are adopted in the form of a Regulation (i.e. secondary legislative act), but they are considered to be at least in part administrative acts and can be challenged as such in courts or by means of administrative review.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As rule administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

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

Judicial review of discretionary decisions is limited. The court cannot exercise the discretion instead of the public authorities but can only check whether these discretionary powers were used lawfully. This means that if significant mistakes were made, the court cannot rectify this and make a new, fair and lawful decision itself. The court is also barred from re-evaluating value judgments of authorities.

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

According to the general rules and principles of administrative court procedure, administrative courts have an obligation to offer necessary support and guidance to parties of the court procedures in order to ensure that all of the parties have an equal chance to present and explain their arguments and challenge the arguments brought by the other side. The courts are also obliged to guide the parties if it is evident that they lack the necessary knowledge and experience to make the necessary claims to reach their objectives.

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

There are no rules specific to the present matters. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out in as little time and with as little cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. Judges have general duty to deal the case within in reasonable time.

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?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties

(e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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

Executive regulations and/or generally applicable legally binding normative instruments which do not have a direct effect on anyone's rights are not considered administrative acts and thus cannot be challenged either by means of administrative review nor judicial review. However during a court review, a person may request a court to set aside a legislative act relevant to the specific case on the basis that the act contravenes the Constitution. Agreement of the court to the applicants' position also leads to constitutional review by the Supreme Court.

For so-called 'mixed acts', where part of the decision is substantively an administrative act and part of the decision not, the usual rules for standing apply. This means that they can be (partially) challenged by anyone whose rights they breach (breach of rights is presumed for environmental NGOs). The most relevant type of a mixed act is the detailed nature protection rules.

The detailed protection rules have to be provided for certain types of nature protection areas. The rules foresee zoning of the areas and specify the requirements for human activities in each zone. The Nature Protection Act sets out the framework for the rules and also the default regime for each type of zone. For instance, the act prohibits regeneration cutting (a type of forest felling) within limited management zones and the use of floating devices in conservation zones unless specified otherwise in detailed protection rules. The protection rules for Kõnnumaa landscape protection area specify that cutting of forest is allowed in the limited management zone of *Ohekatku* from August to January and that the use of engineless floating devices is allowed throughout the protected area. The Supreme Court has found that such acts have a mixed nature. The detailed protection rules are administrative acts in so far as they significantly affect specific plots of land. The cases concern rights of construction. However, in the example above the court would probably find that the provision on logging constitutes an administrative act and the provision on the use of engineless watercraft is a legislative measure. See RKHKm 07.05.2003, 3-3-1-31-03, RKÜKo 31.05.2011, 3-3-1-85-10.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers "purposefulness" of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As rule administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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.?

Participation in the administrative procedures is not a precondition to have standing in national courts.

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?

Injunctive relief is available, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. The courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court's own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant's rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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?

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (*kohtukulud*) and extrajudicial expenses (*kohtuvälised kulud*). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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[6]?

Legal challenges cannot be brought directly against EU regulatory acts to national courts. However, if reaching a judgment in the case brought against a national measure would be dependent on first determining the validity of acts adopted by the institutions, bodies, offices or agencies of the Union, a request for preliminary ruling may be made by national courts. Making such a request and its contents are in any case at the discretion of the national court; although any party of the proceeding can apply for such a request to be made, there is no mechanism to force the court to do so.

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

[3] 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.

[4] 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.

[5] 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

[6] 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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