

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?

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. They can also bring a claim for administrative review before the competent authority. The interest must be personal and different from a general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.

ENGOS have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOS have legal standing if the State of Luxembourg authorises them but national ENGOS are favoured as it is easier for them to receive official approval. In theory, local ENGOS could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOS have been recognized as having national importance by the Ministry. Foreign ENGOS need to have Luxembourg “residence” in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOS. Access to national courts in light of CJEU case law and related national case law is relatively effective in Luxembourg as long as the ENGOS have standing.

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 administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial 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 have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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

There are no grounds/arguments precluded from the judicial review phase.

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

There is no such notion as equality of arms in Luxembourg.

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

There are no specific requirement in law that environmental procedure should be timely.

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 outside of the scope of the EIA and IED Directives in cases where there is a risk of serious damage.

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.

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?

In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being 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[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?

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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 administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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 in cases where there is a risk of serious damage.

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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?

In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being 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[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?

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. They can also bring a claim for administrative review before the competent authority. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.

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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 administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial 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 have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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 in cases where there is a risk of serious damage.

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.

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?

In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural

indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.

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?

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.

Administrative review can take two forms before the administrative tribunal : a claim to obtain the invalidation of the administrative decision or a claim to request the reformation of the de decision. Before taking an action before the administrative tribunal, an administrative review can be taken before the competent authority.

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

The form in which the plan or programme is adopted makes no difference in terms of legal standing.

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 administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

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.?

In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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

There are no grounds/arguments precluded from the judicial review phase.

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

There is no such notion as equality of arms in Luxembourg.

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

There are no specific requirements in law that environmental procedure should be timely.

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 in cases where there is a risk of serious damage.

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.

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?

In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.

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?

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.

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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 administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial 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 have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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 in cases where there is a risk of serious damage.

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.

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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]?

It is possible to bring a legal challenge before the administrative tribunal of Luxembourg concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU. Prejudicial questions can be sent to the Tribunal.

[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

■ Last update: 22/07/2021

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