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?

As explained under points 1.4.1) and 1.4.3), under Polish law, individual decisions relating to the environment may be challenged by: (a) natural and legal persons who are considered as "parties to the administrative proceedings", (b) entities (such as NGOs, the public prosecutor or the Ombudsman) who participate in the proceedings "with the rights of a party".

(a) According to Article 28 APC, a party is a "*person whose legal interest or duty is affected by the proceedings or who demands activities of authority because of this legal interest or duty*". The definition of a "*party to the administrative proceedings*" is therefore crucial to understanding who can challenge decisions of the administration.

Therefore, according to the general rules provided by the APC, standing is granted to those individuals (whether natural or legal persons) who have a "legal interest" (which includes also administrative duties). A person has a legal interest in the case when that interest is protected by any provision of (administrative, civil or other) law. For example when an administrative decision may affect one's property (e.g. in case of construction of a new object the owners of the adjoining properties may be affected). A person who filed an application for an administrative decision challenged then before the administrative court or a person to whom a decision was addressed always has a "legal interest" in the case and thus have standing. Such persons are considered to be "parties" to the administrative procedure.

As proceedings before the administrative courts in the case of individual administrative decisions are a follow-up to proceedings before the authority of the second instance, the circle of persons entitled to file a complaint to the court of the first instance is determined by the administrative phase of proceedings.

However, a person who did not take part in the administrative proceedings but whose legal interest is affected by the proceedings may also file a complaint (Article 50 § 1 PACLA).

(b) In proceedings not requiring public participation, environmental NGOs may apply to be admitted to the proceedings with the status of a party. The legal basis for this is Art. 31 APC according to which social organisations enjoy standing in cases regarding individual administrative decisions where they represent a common interest. The organisation may participate in the proceedings with the rights of a party, which means that it enjoys the same rights as a party to the proceedings, including a right to appeal. In order to be admitted to participate, an organisation must file a relevant motion. In this case the NGO has to prove that:

- it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in the district), as ad hoc groupings do not have standing;
- its participation in the proceedings is justified by the objectives established in the by-laws of the organisation (in other words if the subject matter of the case is in conformity with the organization's

objectives);
- its participation in the proceedings is justified by the “public interest”.

The public authority then assesses the motion and decides whether it considers it justified. The assessment is not limited to verification of formal requirements, but concerns also the merit justification (need) for participation by the organisation in a given case (in other words: the authority decides whether it considers it useful, from the point of view of the “public interest”, to allow the organisation to participate). A refusal may be challenged by the organisation to the authority of second instance and then - subsequently - to the administrative court.

The organisation which took part in the preceding administrative proceedings on the basis of Article 31 of APC has standing also before the administrative courts. An NGO which has not taken part in the preceding administrative proceedings is not entitled to challenge the decision of the second instance authority, i.e. has no right to file a complaint to the administrative court (Article 50 § 1 PACLA).

However, if the judicial-administrative proceedings, initiated by another party, concerns the scope of the NGO’s activity, participation of the organisation may be granted by the court of its own motion; the courts’ refusal may be challenged before the administrative court of second instance (Article 33 § 2 PACLA). According to case law, the court also has to verify whether the ”public interest” speaks for the participation of the NGO.

The rules described above may be modified by specific provisions regarding particular decisions:

Article 185(1) EPLA limits the circle of parties in the proceedings regarding permits for emissions of gases into THE air (i.e. other than integrated permits) to the operator of the installation subject to the permit. Only in very exceptional cases - when a so-called “restricted use area” is to be created around the installation - are certain neighbours also regarded as parties to the proceedings.

Article 401(1) WLA specifies that parties to the proceedings regarding decisions authorising the use of water (e.g. water permits) and hence entitled to challenge these decisions are: the project proponent and the persons who will be affected by the intended use of water or the entities within the range of impact of the planned water facilities. Art. 402 WLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued.

Article 41 GMLA specifies that parties to the proceedings regarding concessions for extraction of mineral resources are only the owners of properties on which the mining activity is to be carried out.

Article 28(2) BLA specifies that parties to the proceedings regarding construction permits are only investors and owners, perpetual usufructuaries or managers of properties located in the area of impact of the building object. The term “impact of the building object” is defined by Article 3(20) BLA as “an area designated in the vicinity of a building object on the basis of specific regulations, introducing restrictions on development, including buildings, of that area”. Article 28(3) BLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued.

Decisions issued on the basis of the WLA, GMLA and BLA may concerns projects subject to EIA or other projects. The above limitations regarding persons having standing in such cases jeopardise the effectiveness of access to justice in these matters, as in practice in some cases only the developer (operator) who initiated the proceedings is entitled to challenge a decision.

An appeal against the decision of the authority of the first instance to the authority of the second instance shall be filed within 14 days from the date when the decision of the first instance authority has been delivered to the appealing party. The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the regional administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.

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?

Administrative review

In an appeal lodged with the administrative authority of the second instance, the claimant may raise both

procedural and substantive issues. The authority shall examine all the allegations but is not bound by the limits of the appeal, which means that it may find other flaws of the challenged decision than those presented by the claimant.

Judicial review

In an appeal lodged with the administrative court, the claimant may raise both procedural and substantive issues.

The administrative court of first instance is not bound by the limits of the appeal, which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors in the proceedings listed in Article 183 § 2 PACLA.

However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority which includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.

According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court has no mandate to take evidence on its own. The only exception from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not ”excessively” prolong the proceedings, which means that there will be no need to adjourn the trial.

Administrative courts, unlike civil courts, have no competence to call expert witnesses.

Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether they proved it in the reasoning behind the decision.

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 of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister or a Self-governmental Appeal Board (authorities which have no “higher instance” over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situations, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

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.?

There is no requirement to participate actively in the administrative proceedings.

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

There are no grounds/arguments precluded from the judicial review phase. However, at the stage of proceedings before the Supreme Administrative Court only the proceedings before the administrative court of the first instance are subject to examination, so the arguments have to be focused on this phase.

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

Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review

proceedings.

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

As explained under point 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called “instructional” for the authority which means that in practice this may take longer (according to Article 36 APC, any prolongation of the proceedings shall be reasonably justified and parties shall be informed; in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court.

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?

Rules on injunctive relief as described under point 1.7.2. apply to all administrative decisions.

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?

Within the administrative review procedure, each party bears its own costs, which means that the wining party does not recover its costs (the second instance authority does not decide on costs).

Filing an appeal before the administrative authority of the second instance is however free of charge.

According to Article 200 PACLA, before the administrative court of first instance, if the authorities lose the case, they have to pay the claimant’s costs. This includes:

- the court fees,
- the costs of legal representation which are however limited to the cap set by specific provisions[2]. In cases in which no financial value is set (and the majority of environmental cases belong to this category[3]) this cap is PLN 480 which is about EUR 107 (normally these are not the real costs which the claimant paid).

If the authority wins, it is not entitled to claim its costs. Other participants in the court proceedings (persons referred to in Art. 33 PACLA) bear their own costs; the losing party is not obliged to cover them.

There is no express statutory reference to a requirement that costs should not be prohibitive, however if the authority wins, it is not entitled to claim its costs. Also, the above court fees are rather modest.

Articles 203 and 204 f PACLA provide for rules on the distribution of costs in proceedings before the court of second instance. This includes the court fees and also the costs of legal representation but only up to the cap which in the vast majority of environmental cases brought by citizens or by environmental NGOs is PLN 480 (about EUR 107).

Article 203 regulates the situation when the court of second instance allowed the appeal. According to this provision:

- in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court’s judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal,
- in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court’s judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.

Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision:

- in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the authority whose decision was subject to proceedings before the court of first instance,
- in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the claimant in the proceedings before the court of first instance.

However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i.e., they exempt the NGO from the payment of costs).

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[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 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?

In Poland, plans, programmes and other strategic documents, including those regarding environment, are to be adopted by:

- self-governmental authorities; there are three levels of self-governmental authorities: community (*gmina*), district or poviat (*powiat*) and region (*województwo*) or
- governmental authorities: either at the central level (by ministers or other central agencies) or at the regional level.

Specific Acts (*ustawy*) specify when and by whom a given document shall be adopted.

Certain of these documents have a status of "local law" which means that they are sources of law recognized by the Polish Constitution; others do not have this status but still are important for the management of a given area (they influence the individual decisions, determine activities by the competent authorities, shape the development etc.).

The circle of persons entitled to challenge the plans and programmes is determined by the Acts providing the general basis for adoption of these plans and programmes (which are in this regard *lex specialis* in relation to the general rules provided by PACLA). These are:

- For plans and programmes to be adopted by various levels of self-governmental authorities:
  - The Act of 8 March 1990 on Communal Self-Government – Art. 101(1),
  - The Act of 5 June 1998 on Poviat Self-Government – Art. 87(1),
  - The Act of 5 June 1998 on Regional Self-Government – Art. 90(1).
- For plans and programmes to be adopted by governmental authorities:
  - The Act of 23 January 2009 on the Voivod and the Governmental Administration in the Voivodship - Arts. 63(1).

Standing of individual persons

The Act on Communal Self-Government and the Act on Poviat Self-Government stipulate that a strategic document adopted by the administration may be challenged by persons whose legal interest or right has been infringed by that document; these persons may file a claim to the administrative court (Article 101(1) of the Act on Communal Self-Government; Art. 87(1) of the Act on Poviat Self-Government).

The Act on Regional Self-Government allows people to challenge only the plans and programmes with the status of "local law" and grants the right to challenge them to persons whose legal interest or right has been infringed by the provision of the local law (Art. 90(1) of the Act on Regional Self-Government).

Also Article 63(1) of the Act on the Voivod and the Governmental Administration in the Voivodship allows for challenging the plans and programmes with the status of “local law” and grants the right to challenge these plans to persons whose legal interest or right has been infringed by the provision of the local law (thus the circle of persons entitled is exactly the same as in the above cited Acts on self-governmental authorities).

As explained above, the “legal interest” is understood in Poland as an interest protected by any provision of (administrative, civil or other) law - the classic example of such interest is ownership of property (which could be affected e.g. by a construction of a new project).

The above cited four Acts (on self-government authorities and on governmental authorities) grant access to justice to persons whose legal interest is “involved” in the case, and who can prove that their legal interest or right has been infringed (the mere threat or possibility of infringement is insufficient).

This means that the group of persons entitled to challenge a plan or programme is very narrow - narrower than in case of individual decisions, where it is sufficient to demonstrate the mere existence of a legal interest in the case and not its violation (this view was confirmed by the Supreme Administrative Court e.g. in the verdict of 22 February 2017 (II OSK 1497/15), in the verdict of 20 November 2014 r. (I OSK 1747/14) and in the decision of 8 October 2013 (II OZ 787/13).

In a number of verdicts, the administrative courts confirmed the above, narrow, understanding of standing to challenge plans or programmes and presented a narrow interpretation of the infringement of the legal interest or right.

For example, in the verdict of 17 October 2017, the Supreme Administrative Court held that the right to challenge the local spatial plan is granted to the person whose legal interest has been infringed by the contested plan, while the infringement must be direct, individual, objective and real, and the complainant must demonstrate a link between the contested resolution and its individual legal position (II OSK 2559/16).

In the verdict of 14 April 2011, the Supreme Administrative Court interpreted Article 87(1) of the Act on Poviat Self-Government and held that this Article should be interpreted narrowly and not in a broad way by deriving a breach of a legal interest from general values or principles of law (I OSK 5/11).

In the verdict of 30 March 2017, the Supreme Administrative Court, in interpreting Art. 101(1) of the Act on Communal Self-Government, held that in order to appeal against a resolution of the Commune Council, a person has to prove that their legal interest has been violated and only that they ”have” a legal interest in the case (II OSK 1941/15).

Similar views have been expressed in other verdicts and decisions of the Supreme Administrative Court, e.g.: verdict of 14 November 2017 (II OSK 457/16), verdict of 20 June 2017 (II OSK 2648/15), verdict of 31 May 2017 (II OSK 2298/15), verdict of 20 April 2017 (II GSK 1912/15), verdict of 7 March 2017 (II OSK 1679/15), verdict of 7 March 2017 (II OSK 1587/15), verdict of 10 February 2017 (II OSK 1344/15), verdict of 5 November 2014 (II OSK 977/13), verdict of 25 March 2014 (II OSK 355/14), verdict of 28 June 2007 (II OSK 1596/06).

Following the interpretations of the Supreme Administrative Court, the Regional Administrative Courts apply the same approach.

An appeal to the court is to be submitted at any time, there is no deadline (Art. 53.2a PACLA).

Standing of NGOs

As far as NGOs are concerned, it should be stressed that there is no provision in Polish law allowing them to challenge a plan or programme (unless they had their own legal interest or right infringed, which means they would act as private entities and not in the common interest).

The lack of standing for NGOs in cases concerning of strategic documents is confirmed by the jurisprudence of the Supreme Administrative Court (see verdict of 15 February 2017, II OSK 1277/15; verdict of 21 March 2017, II OSK 2865/15 and order of 23 January 2018, II OSK 3218/17).

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?

Persons having standing may raise all aspects (regarding both procedural and substantive legality). However, according to jurisprudence the court examines the case only within the limits of the claimant's legal interest. This means that for example in the case of a local spatial plan the court - although it examines the entire procedure regarding the plan - may annul it only with regard to the property of the claimant, as the claimant's legal interest concerns only this piece of land (verdict of the Supreme Administrative Court of 5 June 2014, II OSK 117/13; verdict of the Supreme Administrative Court of 25 November 2008, II OSK 978/08).

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

In the case of strategic documents (plans and programmes) the exhaustion of administrative review procedures prior to recourse to judicial review is not required.

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.?

There is no requirement to participate actively in the public consultation phase of the administrative procedure in order to have standing.

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?

The administrative court of the first instance may suspend execution of the administrative decision subject to complaint - ex officio or on the motion of a party (Article 61 § 3 PACLA).

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 cases concerning plans or programmes, the court fee is fixed at PLN 300 (currently about EUR 66) for the court of first instance and PLN 150 (about EUR 33) for the court of second instance.

According to Article 200 PACLA, before the administrative court of first instance, if the authorities lose the case they have to pay the claimant's costs. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 (about EUR 107) - normally these are not the real costs which the claimant paid.

In case the authority wins, it is not entitled to claim its costs.

Articles 203 and 204 PACLA lay down rules on the distribution of costs in proceedings before the court of second instance. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 (about EUR 107).

Article 203 regulates the situation where the court of second instance allowed the appeal. According to this provision:

- in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court's judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal,
- in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court's judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.

Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision:

- in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the

authority whose decision was subject to proceedings before the court of first instance,
- in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court's judgement - the person who filed the appeal has to pay the costs of the claimant in the proceedings before the court of first instance.

However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i.e., they exempt the NGO from the payment of costs).

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?

All rules, as well as the assessment of the effectiveness of the level of access to national courts as described under point 2.2, apply here.

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?

All rules described under point 2.2 apply here.

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

All rules described under point 2.2 apply here.

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.?

All rules described under point 2.2 apply here.

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?

All rules described under point 2.2 apply here.

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?

All rules described under point 2.2 apply here.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[6]

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?

All rules described under point 2.2 apply here.

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)?

Plans or programmes adopted in the form of a Regulation (*rozporządzenie*) by the Council of Ministers or a Minister are not subject to access to justice as described under point 2.2. For them the rules described under point 2.5 do apply.

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?

All rules described under point 2.2 apply here.

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

All rules described under point 2.2 apply here.

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.?

All rules described under point 2.2 apply here.

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

All rules described under point 2.2 apply here.

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

Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

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

There no deadline set for the administrative court to deliver its judgment, so it is not implemented.

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?

All rules described under point 2.2 apply here.

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?

All rules described under point 2.2 apply here.

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

There is no direct access to the court to challenge a normative instrument. Such an instrument may be subject to a "constitutional complaint" to be lodged with the Constitutional Tribunal, but only with regard to its compliance with the Constitution. According to Article 79 para 1 of the Constitution, "everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution".

This means that the conditions to lodge a constitutional complaint are:

- one has to obtain a final verdict or a final administrative decision deciding on this person's constitutional rights or freedoms,
- the verdict or decision has to be based on a normative act subject to complaint;
- the constitutional complaint shall concern the compliance of that normative act with the Constitution.

In Poland only the water management plans (of those relating to the environment) have to be adopted by way of a normative act: a regulation by the minister in charge of water management. These plans are: river basin management plans, flood risk management plans (as required by Chapter IV of the Directive on the assessment and management of flood risks) and drought management plans. Although these plans may influence the individual administrative decisions, it seems unlikely that a decision could be regarded as "issued on the basis" of a given plan.

Moreover, bearing in mind the nature of the water management plans, it seems rather unlikely that they could be in non-compliance with the Constitution. Therefore the constitutional complaint is will probably not apply to these plans.

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 review by the Constitutional Tribunal encompasses conformity with the Constitution only.

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

Not applicable to the constitutional complaint (see answer to question 2.5.1).

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.?

Not applicable to the constitutional complaint.

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 is no injunctive relief.

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?

According to Article 54 of the Act of 30 November 2016 on the organisation and procedure of proceedings before the Constitutional Tribunal, the costs of the proceedings before the Tribunal shall be borne by the State Treasury. In the judgment accepting a constitutional complaint, the Tribunal shall award to the claimant the reimbursement of the costs of proceedings from the body which issued the normative act which is the subject of the constitutional complaint. In justified cases, the Tribunal may also award reimbursement of the costs if it has not accepted the constitutional complaint. The Tribunal may determine the amount of the costs of representation of a constitutional

complaint by an advocate or legal adviser, depending on the nature of the case and the contribution of the representative in contributing to its clarification and resolution.

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[8]?

There is no such procedure.

[1] This category of case reflects recent case-law of the CJEU such as: Protect C-664/15 (EU:C:2017:987), the Slovak brown bear case C-240/09 (EU:C:2011:125), see as described under Commission Notice C/2017/2616 on access to justice in environmental matters, OJ C 275, 18.8.2017, p. 1.

[2] Regulation of the Minister of Justice of 22 October 2015 on advocates' fees (J.L. of 2015, item 1800 as amended) and Regulation of the Minister of Justice of 22 October 2015 on attorneys' fees (codified text J.L. of 2018 item 265).

[3] For example complaints against permits for emissions, EIA decisions or other decisions allowing the use of the environment are considered as cases in which no financial value is set. The financial value may be attributed to complaints against decisions imposing environmental fees or fines, but in such cases only the company or other entity obliged to pay the fees or fines has standing (citizens or environmental NGOs have no standing here).

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

[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 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-237/07, Janecek (EU:C:2008:447) and cases such as Boxus and Solvay C-128/09 - C-131/09 and C-182/10 (EU:C:2011:667), as referred to under Commission Notice C/2017/2616 on access to justice in environmental matters.

[7] 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*, EU:C:2017:774.

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

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