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

At the national level, other specific activities that are not regulated by the EIA and IED directive, are regulated:

- EGO 57, from 20 June 2007, regulates the regime of protected natural areas, the conservation of natural habitats and of flora and fauna, transposing Directive 79/409/CEE (the Birds Directive) and the Directive 92/43/CEE (the Habitats Directive);
- Water Protection Act no 107/1996, amended several times;
- EGO 195/2005 regarding the environmental protection;
- EGO 43/2007, regarding the placement of genetically modified organisms on the market;
- EGO 202/2002, regarding integrated management of the coastal zone;
- Law no 104/2011, regarding the quality of the ambient air;
- Law no 211/2011, republished, regarding the waste regime;
- The Forest Code, Law no 46/2008, republished in Official Monitor no 611, August 2015;
- Law no 121/2019, regarding the evaluation and management of ambient noise;
- Law no 59/2016 regarding the control over the major accident hazards in which are involved dangerous substances transposing the Seveso Directive.
- etc.

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

The applicable national statutory rules on standing for both individuals and NGOs are the same rules from administrative Law no 554/2005 as described above under questions 1.4.1 etc. Access to national courts is effective in Romania. The case law of the European Court of Justice will always have priority and will enjoy a presumption of genuine interpretation of EU law.

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

There are no special provisions regarding this matter so the general rules will apply. They are described at point 1.3.1 and 1.3.2.

The person whose right recognized by law or whose legitimate interest is impaired through a unilateral administrative act, who is dissatisfied with the response received to the previous complaint or who did not receive any response within the time limit[1] (30 days) may refer to the competent administrative litigation court, in order to request the cancellation in whole or in part of the act, repair the damage caused and, possibly, claim reparations for moral damages. Also, persons who consider themselves harmed in a right or a legitimate interest if the authority did not resolve the addressed matter in the time specified by law or if the authority refused to carry out a certain administrative operation necessary for the exercise or protection of the person's rights or legitimate interests can submit a request to the court. The reasons invoked in the application for annulment of the act are not limited to those invoked by the prior administrative complaint.

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

The administrative review regulated by Art. 7 of Law no 554/2004 is mandatory. It must be done prior to recourse to a judicial review. Before addressing the competent administrative litigation court, the person who is considered injured in his or her right or in a legitimate interest in an individual administrative act addressed to him must ask the issuing public authority or the hierarchically superior authority, if it exists.

However, exceptions can be made in the case of actions introduced by the prefect, the People’s Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts that cannot be revoked as they entered the civil circuit, have produced legal effects, as well as the cases from Art. 2, alin 2 of Law 554/2004 (in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term) and Art. 4 (when the legality of an administrative individual act (disregarding the emission date) is invoked as an exception ex officio or by request of a party in a trial before the court) the administrative complaint is not mandatory. A more detailed analysis can be seen at points 1.3.1 and 1.7.1.

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.?

In Romania participation in the public consultation phase is not a condition to have standing before the courts.

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

If a person is not satisfied with the response of the administrative authority, or the authority did not give a response to the complaint in the time periods provided by law as well as in the case of a refusal (detailed in Art. 7 of Law no 554/2004, the harmed person can file a complaint at the Tribunal or the Court of Appeal (based on the jurisdiction described in Art. 10 of Law no 554/2004). The litigation will be judged in public hearing. The response to the complaint (submitted by the defendant) is mandatory and will be communicated to the plaintiff at least 15 days before the first date of trial. The decisions of the court are drafted and motivated within 30 days of the pronouncement. If the object of the complaint is a unilateral administrative act, the court solving the complaint can:

- cancel in whole or in part the administrative act
- oblige the public authority to issue an administrative act
- issue another document or perform a certain administrative operation

In resolving the complaint, the court will also establish the material or moral damages.

When the object of the action in administrative litigation is drawn up by an administrative contract the court can:

- order its cancellation, in whole or in part;
- oblige the public authority to conclude the contract to which the applicant is entitled;
- request one of the parties to fulfil a certain obligation;
- supplement the consent of a party when the public interest requires it;
- oblige the payment of damages for the material and moral damages.

The judgement given in the first instance may be appealed within 15 days from communication. The appeal suspends enforcement and is judged in urgency. If the appeal was admitted, the court of appeal, cancelling the sentence, will re-judge the litigation. When the judgement of the first court was rendered without judging the main arguments or if the judgement was made in the absence of the party who was illegally summoned both in the administration of evidence and in the debate on the case, the case will be referred once to the first court. If the judgement in the first instance was made in the absence of the party who was illegally summoned to administer the evidence but was legally summoned in the debate on the case, the court of appeal, cancelling the sentence, will re-judge the litigation. According to Art. 25 of Law no 278/2013 and also according to Law no 554/2004 regarding the administrative procedural law, the court will review the substance as well as the procedural steps in the decisions, acts or omissions that are the object of the public consultation procedure.

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

There are no special rules in this matter, so the general rules will apply.

According to Art. 8 Civil Procedure Code, in a civil matter the parties are guaranteed the exercise of their procedural rights equally and without discrimination.

The right of equality in civil procedure is a fundamental right, being an application of a fundamental right from the Constitution (Art. 16, alin. (1), the principle of equality before the law and public authorities, and Art. 124, alin. (2) which states that the justice is unique, impartial, and equal for everyone, and a guarantee of an equitable process.

According to Art. 7, alin (1) of Law no 304/2004 regarding judicial organization, all people are equal in the face of the law, without privileges and without discrimination, and according to the same article, alin (2), justice is being available equally for everyone, without discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, sexual orientation, opinion, political affiliation, wealth, origin, or social condition or any other discriminatory criteria. Also, Art. 2 of the same Law (304/2004) states that justice dispensed by judges in the name of the law is unique, impartial, and equal for all.

The equality of parties in a civil matter means that the parties have the right to be judged by the same organs of judicial power according to the same procedural rules, benefiting from the same procedural rights in the specific litigation that is subject to judging, which basically means that in an identical situation, parties cannot be treated differently.

The existence of specialized instances or specific different procedural rights in some matters is not contrary to this principle, because those specific courts resolve all the litigation that falls under the courts' specialization, without any discrimination, and the special procedural rules will be applied to any party that is part of a litigation subject to the respective derogatory rules. The difference in the treatment of parties could become discriminatory only if a distinction was introduced in analogous or comparable situations, without these being based on a reasonable and objective justification.

The jurisprudence of the European Court of Human Rights enshrines the principle of equality of arms , which means equal treatment of the parties throughout the proceedings before a court, without one of them being favoured over the other. Also, Art. 6 of the European Convention on Human Rights guarantees the right to a fair trial; according to paragraph 1 “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”. Paragraph 2 of the same article states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. In paragraph 3 of Art. 6 ECHR, there are some minimum rights that must be respected regarding a person charged with a criminal offence.

Thus, the procedural documents for which the law imposes the obligation of communication are communicated to all parties. It would have violated the principle of equality of arms, for example, when the court would only communicate to one of the defendants the request for a trial. The same principle would be disregarded if, in evidence or, as the case may be, in combating the same thesis, the court would approve the evidence with witnesses only to one of the parties but rejecting it for the opposing party.

Of course, even if not expressly stipulated, the principle of equality of arms is an implicit principle of criminal law. In the criminal case, irrespective of the parties to the case, they address the same judicial organs explicitly established in accordance with the same procedural rules provided by the Criminal Procedure Code or by special laws. The establishment of a personal jurisdiction or of abbreviated procedures in case of acknowledgment of guilt is not incompatible with the principle of equality.

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

There are no special provisions regarding this matter. The general rules that will apply are from the Civil Procedure Code, but they are recommendations and not binding on the courts:

- an injunctive relief in a civil court must be tried urgently. The decision should be delivered in 24 hours and the written decision should be given within 48 hours after the decision was pronounced.
- in the administrative court, the injunctive relief must be tried urgently. Art 14 of Law no 554/2004 establishes an urgent procedure for injunction, derogating from the general procedural regulations in the civil procedure that require longer for the case to receive a hearing in court.

The Civil Procedure Code provides further regulations that are also applicable for the administrative courts: after the judicial research is over, the delivery of the decision can be delayed for up to 15 days, several times. There is no regulation regarding how many times the court can postpone the delivery of the decision. The written decision should be communicated to the parties within 30 days. In duly justified cases, this deadline can be extended twice by 30 days each time. Several judges have been sanctioned for exceeding this term. However, in practice, communicating the written decision usually takes more than 30 days and even more than 90 days.

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

There are no special rules regarding injunctive relief. The main rule is that there is no suspensive effect in any circumstances. In all cases the court must be asked for injunctive relief. The effects of the act will be suspended only if the injunctive relief is admitted by the court. The appeal against the decision of the court to grant the injunctive relief will not suspend the execution of this decision.

In expropriation procedures the administrative decision is immediately executed. The right of property is transferred from the private owner to the state through a unilateral administrative act immediately after the money offered by the expropriator has been deposited into a bank account (the private owner can receive the money only if he/she is not taking legal action against the expropriator asking for more money). An injunctive relief with the object of suspending this transfer is inadmissible according to the Expropriation Law no 255/2010.

Other administrative acts also produce effects regardless of an annulment action in court. The only suspensive effect is provided by the injunctive relief.

Injunctive relief is possible both in administrative procedure and the Civil Procedure Code.

In administrative procedures the injunctive relief concerns only suspension of the effects of an administrative unilateral act.

In civil proceedings the court can grant an injunctive relief to ensure the protection of a right, to prevent an imminent damage, and to remove the obstacles to execution of a court order. The injunction is given only in urgent matters and only for a limited period.

According to Article 14 of Law no 554/2004 regarding the administrative court procedure, you can ask for injunctive relief immediately after submitting the administrative complaint to the public authority that issued the act, before submitting to the court the request for the annulment of the act.

According to Article 15 of Law no 554/2004 regarding the administrative court procedure, injunctive relief can be also introduced together with the annulment request or through a separate request that can be filed until the first instance court has reached a decision regarding the annulment of the act.

To be granted, you must prove that the case is well justified and that without the injunctive relief an imminent damage would be suffered.

In civil procedure the injunctive relief is granted in urgent cases and for a limited period, as described above.

9) Which 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?

There are no special rules in this matter. The general rules will apply.

The cost categories are:

- The fee of the court
- The fee of the lawyer
- The fee of the judicial expert
- The costs of the other party according to loser pays principle

The courts' fees are regulated by Emergency Governmental Ordinance no 80/2013.

The fee for administrative court it varies between approximately 10.35 euros (50 lei) and 62 euros (300 lei). At this moment in Romania 1 euro equals 4.84 lei.

The fees for civil court are established according to the value of the case. There are several criteria given by certain values established by law.

- if the value of the case is under 103 euros (500 lei), the court fee is 8% but no less than 4 euros (20 lei)
- if the value of the case is between 103.72 euros (501 lei) and 1035 euros (5,000 lei), the fee of the court is 8.28 euros (40 lei) plus 7% for the amount above 103 euros (500 lei);
- if it falls between 1,035 euros (5,000 lei) and 5,175.05 euros (25,000 lei), the fee of the court is 73.49 euros (355 lei) plus 5% for the amount above 1,035 euros (5,000 lei);
- if it falls between 5,175.45 euros (25,001 lei) and 10,350.48 euros (50,000 lei), the fee of the court is 280 euros (1,355 lei) plus 3% for the amount above 5,174.94 euros (25,000 lei)
- if it falls between 10,350.08 euros (50,001 lei) and 51,757.57 euros (250,000 lei) the fee of the court is 435.80 euros (2,105 lei) plus 2% for the amount higher than 10,348.68 euros (50,000 lei)
- higher than 5,174.34 euros (250,000 lei) – 1,263.66 euros (6,105 lei) plus 1% for the amount higher than 51,746.94 euros (250,000 lei)

The fee for appeal as second grade of jurisdiction is half of the fee at the first court but not less than 4.14 euros (20 lei):

The fee for the recourse as third grade of jurisdiction the fee is 20.70 euros (100 lei) for the cassation motives regulated in Art. 488 para 1 points 1 – 7 of the new Civil Procedure Code. If the motives relating to the application of the substantive law in cases that can be valued in money, the fee of the court is 50% of the amount paid in the first court but no less than 20.70 euros (100 lei). For the cases that cannot be valued in money the fee of the court is 20.70 euros (100 lei).

If the appeal is filed against a decision of the court concerning:

- suspension of the trial proceedings, the fee is 4.14 euros (20 lei)
- annulment of the trial because the fee of the court was not paid, or other cases when the case was not trialled, the fee of the court is 10.35 euros (50 lei).

There is no criterion for estimating a fee of the expert or lawyer. A fee for an expert was about 2,000 euros (9,673.61 lei) and a fee for a lawyer not working for an environmental NGO was at least 1,000 euros (4,836.81 lei).

Very few lawyers work in NGOs, so access to lawyers is very difficult.

The fee to apply for injunctive relief in civil court is 4.14 euros (20 lei), if has no monetary value. If it does, the fee is 11 euros if the value is established at under 413.97 euros (2,000 lei) and 41.40 euros (200 lei) if the value established is higher than 413.97 euros (2,000 lei). There is no deposit needed.

The injunctive relief in administrative court is not mentioned, therefore it should apply Art. 27 which refers to any other cases that cannot be valued in monetary terms. For such cases, the fee of the court is 4.14 euros (20 lei).

The 'loser pays' principle applies every time the other party asks for the costs that they had to bear during the trial. If the other party does not ask for such costs then the principle will not apply. The court could also compensate the expenses if only a part of your request was admitted, and the rest rejected. In this case, the court could reimburse the expenses, so that either party will pay the remaining part, or nothing if the entire sum would compensate. There is no special regulation concerning the way the judge should allocate the costs. The judge could determine according to his own individual understanding whether the costs as requested by the party are equitable or not. However, the judge is not able to allow the costs to be higher than the amounts that are proved with fiscal receipts.

There are some exceptions from the judicial fee according to Art. 29 of Emergency Governmental Ordinance number 80/2013, but none of them refers to environmental cases

Also, Art. 30 states that the actions and applications are excepted from the judicial fee, including the legal remedies formulated, according to the law, by the Senate, the Chamber of Deputies, the Presidency of Romania, the Government of Romania, the Constitutional Court, the Court of Accounts, the Legislative Council, the People's Advocate, the Public Ministry and the Ministry of Public Finance, regardless of their object, as well as those formulated by other public institutions, regardless of their procedural quality, when they have as their object public revenues.

In order to provide access to justice to every person addressing a matter to a court of justice, even to those who do not have the financial resources to pay the judicial fee, EGO nr. 51/2008 provides access for those who need it to a public judicial aid, which is basically a form of assistance provided by the government, with the purpose of ensuring the right to a fair trial and a guarantee of equal access to justice. This assistance can be obtained in litigation regarding civil, commercial, administrative, work a public insurance cases as well as any other cases, except the criminal ones. Public judicial aid may be requested, under the conditions of this emergency ordinance, by any individual who cannot meet the costs of a trial or those involved in obtaining legal consultations in order to defend a legitimate right or interest in justice without endangering his or his family's maintenance.

The public judicial help was broadly described in sections 1.6.1.1 and 1.7.3.3, so in order not to overload this section, we will simply indicate the chapter where it was largely analysed.

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]

The SEA Directive 2001/42/EC was transposed into national law by Government Decision (GD) no 1076/2004. This decision establishes the procedure for carrying out the environmental assessment, applied for the purpose of issuing the environmental opinion necessary for the adoption of plans and programmes that could have significant effects on the environment. The decision also defines the role of the competent authority for environmental protection, the requirements of the stakeholders and the public participation procedure.

The screening decision as well as the SEA permit can be challenged in court according to the general procedure regulated for all administrative acts:

The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public. The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7 of Law no 554/2004 regarding the administrative procedural law).

According to Law no. 554/2004, Art. 10 contains the rules regarding the competent court.

So disputes regarding administrative acts:

- issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,000 lei (102,939 euros) will be resolved by the tribunals, and
- issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei will be resolved by the courts of appeal.

The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.

According to the provisions of GD 1076/2004, the potential significant effects on the environment that may occur through the implementation of the plan or programme must be identified, described and evaluated.

The environmental assessment is carried out during the preparation of the plan or programme and is completed before its adoption or its submission in the legislative procedure. This procedure has 3 stages[2]:[3]

- the screening phase of the plan/programme in the environmental assessment procedure;
- the scoping phase of the project plan/programme and the writing of the environmental report;
- and the stage of analysis of the quality of the report and the decision-making.

These stages provide for the completion of several steps, including the consultation of the public and of the authorities interested in the effects of the implementation of the plans/programmes, taking into account the environmental report and the results of these consultations in the decision-making process and the insurance informing about the decision taken.

Environmental assessment is a procedure that involves not only drawing up the environmental report, but also a consultation process, in which both the public and the authorities with responsibilities in the field of environmental protection can express their opinions and suggestions.

This definition clearly establishes that the consultation process is an inseparable part of the evaluation. In addition, the results of the consultation must be considered in the decision-making process. This underscores the importance of consultation in the process of environmental assessment.

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

The applicable national statutory rules on standing for both individuals and NGOs are the same as described above under questions 1.4.1 etc.

According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be ”social organisations” which can challenge the administrative acts, (these include environmental administrative acts) based on ”the public legitimate interest”, if the protection of the environment is an objective included into the NGO’s statutes.

The legitimate public interest is defined as the interest concerning “*the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities*”.

The individual, however, according to Art. 2 letter a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.

This is the general provision; however, Art. 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred.

An important decision in this matter was given by the High Court of Cassation and Justice, decision no. 8/2020. This court established that in the uniform interpretation and application of the provisions of Art. 1 para. (1), Art. 2 para. (1) lit. a), r) and s) and Art. 8 para. (11) and (12) of the Law on administrative litigation no 554/2004 that in order to carry out a legality check on administrative acts at the request of associations, as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to legality directly and the objectives of the association, according to its statutes.

This decision gives the possibility for every NGO that has an objective (established in its statutes) in the field of the litigation to act against the said administrative act that has an impact in the field where the NGO acts.

The screening decision as well as the SEA permit can be challenged in court according to the general procedure (law no. 554/2004) as they are considered administrative acts.

Through the judgment given in Case 314/85, Photo Frost, the Court of Justice reiterated the principle according to

which it is solely competent to rule on validity of the acts of the EU institutions, according to the necessity of uniform application of the European law, a requirement that is particularly strong when questioned the validity of an EU act. Thereby, the case law of the European Court of Justice will always have priority and will enjoy a presumption of genuine interpretation of EU law[4].

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

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

3) Before filing a court action, there is 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. General administrative rules from Law no. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the 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?

Concerning the transposition of SEA there are no special rules on this. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

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?

The applicable national statutory rules on standing for both individuals and NGOs are the same rules from the administrative Law no 554/2005 as described above under questions 1.4.1 etc.

In Romania, there is no exhaustive list containing all the plans and programmes that can be challenged or not. This can be established based on the specific content of the plan. If the plan or programme does not fall under SEA, it will fall under Law no 52/2003 on decision-making transparency in public administration regarding the public consultation procedure, and other sectoral legislation. Such administrative acts can be challenged according to the general dispositions from Law no 554/2004.

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?

There are no special provisions regarding this matter so the general rules will apply. They are described at point 1.3.1 and 1.3.2.

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. General administrative rules from Law no. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the 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?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

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?

The SEA Directive 2001/42/EC was transposed into national law by Government Decision no 1076/2004. The plans and programmes that are *specifically required by EU law to be prepared* are adopted through Laws issued by the Parliament, or normative administrative acts such as Governmental Decisions or Ministerial Orders, depending on the importance of the plans/programmes. The Laws issued by the Parliament cannot be contested in court, however, they can be attacked on constitutionality issues by the parties to a judicial case based on the law, by the Ombudsman, or by the political parties from the Parliament after adoption or by the President of the Republic pending promulgation.

The Governmental Ordinance can be contested in court according to Law no 554/2004 Art. 9 only together with a claim of unconstitutionality.

The other normative administrative acts can be contested in court according to the dispositions of Law no 554/2004.

The applicable national statutory rules on standing for both individuals and NGOs are the same from the administrative Law no 554/2005 as described above under questions 1.4.1 etc.

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)?

There are no different *locus standi* conditions if the plan or programme is adopted by legislation, by an individual

resolution of a legislative body, or by a single act of an administrative body etc. The general rules from Law no 554/2004 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?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

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

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the courts.

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

There are no special provisions regarding this matter. The answer is the same as at point 2.1.5.

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

There are no special rules in this matter, so the general rules will apply. They are described at point 2.1.6.

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

There are no special provisions regarding this matter. The general rules that will apply are from the procedural civil code. They are described at point 2.1.7.

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?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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?

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[7]

The European legislation can be transposed into national law through different normative acts:

- Ministerial Orders (they can be contested according to the dispositions of Law no 554/2004 described in points 1.4, 1.8.1)
- Government Decisions (they can be contested according to the dispositions of Law no 554/2004 described in points 1.4, 1.8.1)
- Emergency Government Ordinances (they can be contested according to Art. 9 of Law no. 554/2004). The person injured in a right or in a legitimate interest by ordinances or provisions of ordinances may bring an action in the administrative court, accompanied by the exception of unconstitutionality, if the main object is

not the finding of unconstitutionality of the ordinance or provision of ordinance.
- Laws (they can be contested for an exception of unconstitutionality only by the court or commercial arbitration tribunal before which the exception of unconstitutionality was invoked (by the parties) or directly by the People's Advocate. The parties cannot directly address the matter of unconstitutionality to the Romanian Court of Constitutionality. The Constitutional Court also decides on the constitutionality of the laws, before their promulgation, at the notification of the President of Romania, of one of the presidents of the two Chambers, of the Government, of the High Court of Cassation and Justice, of the People's Advocate, of at least 50 deputies or of at least 25 senators, as well as, ex officio, on initiatives to revise the Constitution.

For example, the adoption of the Natura 2000 sites is made for SCIs through Orders of the Environment Minister and the SPAs through Governmental Decision.

Any administrative decision or act implementing EU environmental legislation would be an administrative act, challengeable in court, except for Laws issued by the Parliament.

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

The applicable national statutory rules on standing for both individuals and NGOs are the same as in the administrative Law no 554/2005 as described above under question 1.4.1 etc.

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?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

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. General administrative rules from Law n. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the 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?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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

The cost that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

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]?

The national courts can ask the European Court of Justice for a preliminary ruling.

Regarding the preliminary ruling, our legislation is not very extensive. The High Court of Cassation and Justice has given some directions in this matter. For example, the High Court of Cassation and Justice through Decision no 2167/2016 has ruled that an application to the CJEU can only be made when in an active litigation the question of the validity of interpretation or the validity of community law is raised. The national court will determine the relevance of Community law for the resolution of the dispute and whether a preliminary ruling is necessary. Also, the question of what may be referred by the national court concerns exclusively questions of interpretation, validity or application of Community law, and not matters relating to national law or particular elements of the case before the court. The answer of the Court of Justice does not take the form of a simple opinion, but of a reasoned decision or order. The receiving national court is bound by the interpretation given when resolving the dispute before it. The decision of the Court of Justice is equally binding on the other national courts invested with an identical issue.

[1] Law no 554/2004, Art. 2, para. (1) let. H

[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] GD 1076/2004, Art. 3, paragraph 2

[4] Priority of the EU legal order over national law, Razvan Horatiu Radu.

[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-237/97, 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.

[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*, ECLI:EU:C:2017:774.

[8] 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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