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?

On a high level, the Swedish review procedures cover most of the provisions of the Aarhus Convention. There are, however, some limitations in the access to justice due to leave to appeal obligations and standing restrictions for environmental organisations, which gives rise to conformity concerns. There is also a lack of information regarding the possibility of the public concerned to appeal permit decisions under the Environmental Code.

The Environmental Code constitutes a framework legislation that consists of the general provisions regarding environmental protection. It applies to all human activities that might harm the environment. The Code contains the environmental principles and provisions providing for environmental quality norms as well as environmental impact assessments. Certain water operations, industrial undertakings, quarries and other environmentally hazardous activities are subject to permit or notification requirements specified in Government ordinances. The Code also contains provisions relating to nature protection, flora and fauna, genetically modified organisms, chemicals and waste. Thus, the Code regulates issues concerning the EIA, the IPPC/IED Directives and the ELD Directive, as well as other environmental decisions, acts and omissions concerning specific activities falling within the scope of EU environmental legislation.

The general rules on legal standing in Chapter 12 Sections 12, 13 and 14 of the Environmental Code are also applicable in those cases that fall outside the scope of EIA, IPPC/IED and ELD.

According to Chapter 16 Section 12 of the Environmental Code, appeals may be made against appealable judgments or decisions by any person who is the subject of a judgment or decision against them.

NGOs which meet the requirements stipulated in Chapter 16 Section 13 of the Environmental Code may challenge many administrative decisions. The requirements are that the NGO is a non-profit association whose purpose according to its statutes is to safeguard nature conservation or environmental protection interests. The association furthermore must have conducted activities in Sweden for at least three years and have at least 100 members or by some other means show that its activities are supported by the public. In respect of shore protection, the provisions also apply to non-profit associations whose purpose according to their statutes is to promote outdoor interests (Chapter 16 Section 14 of the Code).

When a permit has been granted through a judgement by the Land and Environment Court, this judgment may be appealed, with leave to appeal, to the Land and Environment Court of Appeal. In second instance, the judgment may, with leave to appeal, be appealed to the Supreme Court. This limits the right to access to a review procedure for decisions issued by the Land and Environment Court in the first instance. Consequently, in situations where the initial permit decision is taken by the Land and Environment Court and is appealed to the Land and Environment

Court of Appeal, the Swedish review system does not appear to comply with the Convention.

Rules on natural habitat protection originating in the Habitat Directive and in the Bird Directive have been implemented both in Chapter 7 of the Environmental Code and in the Ordinance on Area Protection. Permits are required to conduct activities or take measures that can significantly affect the environment in a Natura 2000 site. Such permits are issued by the County Administrative Boards for smaller activities and measures, but if the activity or measure also requires permits according to EIA- and/or IPPC/IED-related rules, an overall assessment is made and the licensing authority may then be the County Administrative Board or the Land and Environment Court, depending on the type of activity in question.

Rules on species protection originating in the Habitat Directive and in the Bird Directive have been implemented both in Chapter 8 of the Environmental Code and in the Species Protection Ordinance, the Game Act and the Fishing Act. The Species Protection Ordinance includes regulation on protection of wild birds, wild animal species and plant species protected in the stated directives. In individual cases, the County Administrative Boards may, under certain circumstances, grant exemption from the prohibitions. Decisions on exemptions or omissions concerning species protection can be appealed under the same regulations as those applicable in other cases under the Environmental Code. The authorities' decisions are appealed to the Land and Environment Court and, after leave to appeal, to the Land and Environment Court of Appeal.

Decisions on protective hunting are, if the requirements based on the Habitat Directive and on the Bird Directive are met, taken by the County Administrative Boards according to the Game Act and the Game Ordinance. The decision can be appealed to the Administrative Court and, with leave to appeal, to the Administrative Court of Appeal and the Supreme Administrative Court. Rules on standing can be found in Section 42 of the Administrative Procedure Act. A person whom the decision concerns may appeal against it, provided that the decision affects them adversely and is subject to appeal. According to established case law, environmental NGOs also have the right to appeal decisions under the Game Ordinance on hunting of species protected by the Habitats Directive and the Bird Directive.

In order to start a mine in Sweden, three different permits are needed. An exploration permit gives access to the land and an exclusive right to explore within the permit area, while an exploitation concession gives the holder the right to exploit a proven, extractable mineral deposit for a period of 25 years according to the Minerals Act. A permit according to the Environmental Code is also needed. Exploration for minerals may affect water quality and nature. However, the rules on standing when it comes to exploration permits are limited through case law. The general rule for individuals can be found in Section 42 of the Administrative Procedure Act. In case law, the Administrative Court of Appeal has ruled that only those who own the land where the exploration will take place and others with special rights, such as land tenants and holders of hunting and fishing rights, in the same area have standing. NGOs have no standing and cannot appeal an exploration permit, not even if the exploration affects nature or water. When it comes to permits according to the Environmental Code, the ordinary rules in Chapter 16 Sections 12, 13 and 14 apply.

Chapter 16 Section 13 stipulates that an NGO must have been conducting activities in Sweden for three years in order to have legal standing. This requirement of a three-year period of conducting activities in Sweden appears to be contrary to the Aarhus Convention and general EU law principles of non-discrimination. This restriction means that no environmental organisations from other EU Member States may have standing before the Swedish courts. There may be industrial emission activities that affect the environment in other Member States, but environmental organisations from these other Member States would not be able to bring a case regarding these activities in Sweden. (There is an Environmental Protection Convention between Denmark, Finland, Norway and Sweden, which at least ensures that environmental organisations from these countries will have standing before Swedish courts). In the EU context, the current Swedish provision is to be regarded as discriminatory. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a challenge from a Polish NGO was dismissed, but on the grounds that the organisation had not showed that it had support by the public. The judgment with reasoning regarding the support by the public in Poland indicates that a court would set aside the current provision and not dismiss a foreign NGO on the grounds that it has not been operating in Sweden. The problem has been discussed in a Governmental bill regarding EIAs, and the provision has been found discriminatory and thus should be altered, but so far nothing has happened.

The Planning and Building Act refers to the general rules in Section 42 of the Administrative Procedure Act and, by reference to the rules in Chapter 16 Sections 13 and 14, NGOs have been given the right to standing, but in

principle only in cases regarding detailed municipal land use plans. The narrow scope, though, has been expanded through recent case law from the Land and Environment Court of Appeal and the Supreme Court.

According to Chapter 13 Section 11 of the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. Hence, the right to appeal for persons concerned and NGOs is, when it comes to urban detailed development plans, limited to those who have submitted their opinions on the matter during the initial examination period at the municipality and those opinions have not been considered. This rule appears to be contrary to the Aarhus Convention.

## 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 administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.

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

Regardless of who makes the decisions, the County Administrative Board or a Land and Environment Court, an appeal may be filed directly with a court; the Land and Environment Court if the licensing authority is the County Administrative Board, or the Land and Environment Court of Appeal if the permit is issued by the Land and Environment Court.

If the first decision is taken by a local authority, with few exceptions an appeal must first be made through administrative appeal at the County Administrative Board prior to challenging the decision at court.

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

There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgment on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

An exception to this general rule is decisions of a municipality regarding detailed development plans under the Planning and Building Act. To challenge such decisions, the appellant must have raised the objections during the preparatory procedure in the consultation phase.

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

No grounds or arguments are precluded from the judicial review phase.

The absence of litigation costs in administrative cases means that each party has to cover its own costs. This may result in an unequal situation, but this is intended to be regulated by the ex officio principle and the burden on the court to investigate the case, not just to clarify foggy parts.

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

Swedish law requires equal opportunities of the parties in environmental proceedings.

Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party.

The absence of litigation costs in administrative cases means that each party has to cover its own costs. This may result in an unequal situation, but this is intended to be regulated by the ex officio principle and the burden on the court to investigate the case, not just to clarify foggy parts.

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

In the Swedish judicial system, there are no binding time limits within which a court must handle a case. Sweden has incorporated the European Convention on Human Rights (ECHMR) into Swedish law through the Act on the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6(1) of the ECHMR states that everyone shall have the right to ‘a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’.

There is a possibility for a party to ask for priority of a case according to the Priority Review Act.

### 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?

Normally a permit or an exemption cannot be utilised until the possibility of appeal has passed. Hence there is no need for injunctive relief in these cases.

There is, though, a possibility to decide that such decisions, as well as decisions from the supervisory authority, shall be directly executable. If appealed, the higher instance (irrespective of whether this is a County Administrative Board or a court) can decide on injunctive relief following the general rules.

### 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?

There are no costs for bringing a case to court according to these rules.

Each party only has to bear its own costs, but the Swedish environmental legislation does not require legal representation, neither for the administrative procedure nor for the judicial review procedure, and not even for appeals to the Environmental Court of Appeal or the Supreme Court. The only exception to the general rule of a free environmental procedure is found in the permitting procedure for water operations. The applicant here has to pay the litigation costs of all those who will be affected by the activity.

In civil cases concerning damages, the general rules on legal procedure apply, which means that the losing party has to pay all the winning party’s legal costs; the loser party pays principle in full. In civil cases, the litigant has to pay a court fee, around 300 Euros.

Because of this there is no need for rules to safeguard the cost being prohibitive.

## 1.2. Decisions, acts or omissions concerning the administrative procedure 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?

Chapter 6 Sections 3 to 19 of the Environmental Code sets out the rules for strategic environmental assessments for plans and programmes falling under the SEA Directive. The rules are applicable to all plans and programmes drawn up for a number of sectors, setting out the framework for future authorisations for the projects listed in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been deemed to require an assessment in accordance with the Habitat Directive.

In Sweden, the SEA is an intrinsic part of the planning procedure, and this assessment is not made separately to the decision regarding the plan or programme. The SEA shall be approved only if the direct and indirect impacts of the plan or programme are deemed to be adequately described in accordance with the provisions of the Code, and, if approved, this will be noted in the decision concerning the plan or programme.

Because of this system, the SEA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the plan as such.

*Spatial planning*

Sweden has no cross-sector planning for land on the national level; however, there is national-level maritime planning. By 2021 there will be three maritime spatial plans for separate geographical zones. National transportation infrastructure planning also affects the conditions of municipal and regional physical planning.

Like the national planning, the regional planning is relatively limited. The Planning and Building Act stipulates that the municipalities are responsible for the planning of the use of land and water within their geographical boundaries.

The municipality must have a current comprehensive plan that covers the entire area of the municipality. In this plan, the municipality shall present the basic characteristics of its intended use of land and water areas. The plan also has to indicate how the municipality intends to take into account national and regional goals, plans and programmes of significance for sustainable development within the municipality. The stipulations in a comprehensive plan are not legally binding. But if statements are clear and well developed, the practice of the courts show that these plans can have a strong guiding effect.

If the land is unexploited, then an urban detailed development plan process generally needs to be initiated. A detailed development plan enables the municipality to regulate the use of land and water areas in a particular area and is regularly required for all operations listed in Annexes I and II of the EIA Directive and for all public and environmental private projects which have been deemed to require an assessment in accordance with the Habitat Directive. The detailed development plan regulates what are public spaces, development districts and water areas, and how they are to be used and designed. The stipulations in a detailed development plan are binding for adjudication of subsequent building permit applications.

According to the Planning and Building Act, Chapter 13, Section 1, a municipal decision on comprehensive plans may be appealed by any member of a municipality to the Administrative Court and, with leave to appeal, to the Administrative Court of Appeal and the Supreme Administrative Court within three weeks of the decision. In these cases, the administrative courts only try the legality of the municipality's or region's decision. There is no requirement to participate in the public participation stage of the administrative procedure. There is no cost involved in bringing a challenge of a comprehensive plan to court. Each party is only responsible for its own costs, even if it loses the case. The comprehensive plan does not enter into force until the possibility of appeal has passed. Hence there is no need for injunctive relief in these cases.

Municipal decisions on detailed development plans according to the Planning and Building Act, Chapter 13, Section 2, are appealed directly to one of the Land and Environment Courts and may be appealed further to the Land and Environment Court of Appeal (leave to appeal needed). In its judgment, the Land and Environment Court of Appeal may decide to grant permission to appeal the judgment to the Supreme Court, if the decision is of interest as a precedence. The Supreme Court still decides on whether or not to grant leave to appeal.

The Planning and Building Act regulates the right for environmental NGOs referred to in Chapter 16, Section 13, of the Environmental Code to appeal a decision to adopt, amend or set aside a detailed development plan likely to have a significant environmental impact given that the planned area may be used for certain types of activity, and a decision to adopt, amend or set aside a detailed development plan that stipulates that an area will no longer be covered by shore protection. The right to standing for environmental organisations applies provided that decisions on the matter can be expected to have an adverse environmental effect.

For individuals, the general rule on standing in the Administrative Procedure Act is applicable. According to case law, an individual may usually appeal building permits and development plans which may affect them personally (they are neighbours or living within or directly adjacent to the area to which a municipal plan applies).

According to Chapter 13 Section 11 of the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. Hence the right to appeal for the persons concerned is, when it comes to urban detailed development plans, limited to those who have submitted their opinions on the matter during the initial examination period at the municipality and those opinions have not been considered. This rule appears to be contrary to the Aarhus Convention.

## 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?

Planning cases may only be challenged at court.

There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even, on its own initiative, perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues.

The scope of the review in planning cases, however, is more restricted than in other administrative cases, and in principle just focuses on the issues raised by the appellant, Chapter 13 Section 17 of the Planning and Building Act.

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

The decisions on planning taken by the municipality according to the Planning and Building Act may be appealed directly to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal and, finally, to the Supreme Court (leave to appeal needed) if the Land and Environment Court of Appeal provides for this in its judgment (when a precedence is desired).

## 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.?

When it comes to a decision to adopt, amend or repeal a detailed development plan according to the Building and Planning Act, the appellant is obliged to participate in the administrative procedure with the permitting authority during the public consultation phase as a precondition for being entitled to take a case to national court. A person may only appeal a decision on a detailed development plan if they have submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinion have not been considered.

## 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 urban detailed development plan does not enter into force until the possibility of appeal has passed, so there

is no need for injunctive relief in these cases.

### 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?

There is no cost involved in bringing a challenge of a comprehensive or a detailed development plan to court. Each party is only responsible for its own costs, even if they lose the case.

Because of this, there is no need for rules to safeguard against the cost 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]

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

An exception is municipal comprehensive and regional planning according to the Planning and Building Act, which may be challenged through legal review. Any member of a municipality or region has the right to have the legality of the municipality's or region's decision on the plans reviewed by appealing the decision directly to the Administrative Court. The scope of the examination of the court is narrow and the “ex-officio principle” does not apply. In examining the appeal, the court may not take into account circumstances other than those to which the appellant referred before expiry of the appeal period. An appealed decision shall be set aside if it has not come about legally; the decision concerns something that is not a matter for the municipality or the region; the body which took the decision did not have the right to do so; or the decision is otherwise contrary to law or other constitution. There are no requirements for participation in the public participation phase of the administrative procedure before filing a complaint to the court. There are no costs for bringing a case to court, not even if the case is lost.

The administrative procedures to be followed to comply with the public participation requirement of Article 7 of the Aarhus Convention are mainly found in Chapter 6 of the Environmental Code.

In Sweden, the consulting procedures are an intrinsic part of the planning procedure, and this assessment is not made separately to the decision regarding the plan or programme. The plan or programme shall be approved only if the consultation has taken place and if the direct and indirect impacts of the plan or programme are deemed to be adequately described in accordance with the provisions of the Code, and, if approved, this will be noted in the decision concerning the plan or programme.

Because of this system, the procedure itself cannot be appealed separately. However, the procedural requirements and the information contained in a specific case can be challenged when appealing the plan or programme as such.

Chapter 6 of the Code includes regulation on screening, scoping and final authorisation of the plans and programmes relating to the environment, not only those falling under the SEA Directive. The rules are applicable for all plans and programmes if the implementation of the plan, programme or change can be assumed to have a significant environmental impact. This includes action plans necessary to comply with an environmental quality standard, national and municipal waste plans, municipal comprehensive plans (covering the whole municipality), regional planning, municipal plans for supply, distribution and use of energy, regional plans for transport infrastructure, marine spatial planning, national plans for sustainable hydropower and any other plans or programmes relating to agriculture or forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, spatial planning or land use.

The rules stipulate that the authority responsible for the plan or programme shall consult municipalities, County Administrative Boards and other authorities that, due to their special environmental responsibility, can be assumed to be affected by the plan or programme (Chapter 6, Sections 6 and 9). There are no rules stipulating the participation of the public concerned (neither individuals nor NGOs) when it comes to plans and programmes, only when it comes to environmentally hazardous activities. But nothing prevents an authority from consulting the public as well.

Chapter 6, Section 15, stipulates that the authority or municipality, as early as possible in the work on the proposal for a plan or programme, shall produce the environmental impact assessment and make it and the proposal available to the public and the municipalities and authorities that, due to their special environmental responsibility, can be assumed to be affected. They must be given information on how they can take part in the proposal and the environmental impact assessment, as well as how and within what time comments can be submitted. The time for submitting comments must be reasonable. In a decision to adopt a plan or programme, there shall be an account of how the environmental aspects have been integrated into the plan or programme; how the environmental impact assessment and comments received have been taken into account; the reasons why the plan or programme has been adopted instead of the options considered; and the measures planned to monitor and follow up the significant environmental impact of the implementation of the plan or programme (Chapter 6, Section 16). The plan or programme shall be made available to the public and the authorities and municipalities that, due to their special environmental responsibility, can be assumed to be affected.

There are also general rules in the Administrative Procedure Act that an authority must provide the individual with assistance such that they can protect their interests. The assistance shall be provided to the extent that is appropriate with regard to the nature of the issue, the individual's need for assistance and the authority's activities. It should be given without undue delay (Section 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 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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments

## 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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments

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

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments

## 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.?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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

Chapter 6 of the Environmental Code includes regulation on screening, scoping and final authorisation of plans and programmes relating to the environment, not only those falling under the SEA Directive. The rules are applicable for all plans and programmes if the implementation of the plan, programme or change can be assumed to have a significant environmental impact. This includes action plans necessary to comply with an environmental quality standard, national and municipal waste plans, municipal comprehensive plans (covering the whole municipality), regional planning, municipal plans for supply, distribution and use of energy, regional plans for transport infrastructure, marine spatial planning, national plans for sustainable hydropower and any other plans or programmes relating to agriculture or forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, spatial planning or land use.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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)?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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.?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

## 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?

EU legislation is implemented in Sweden through acts adopted by the Parliament (Riksdag) or by ordinances adopted by the Government. By statutory authorisation, many of the central administrative authorities are also responsible for issuing regulations within their field of operation.

The Government and other regulatory bodies regularly apply consultation procedure in connection with the preparation of rules that have general interest. The Government will then appoint a commission of inquiry. After a commission of inquiry has submitted its report, the Government forwards it to relevant public agencies, organisations and municipalities in order to hear their opinions on the proposals. This is known as referral of a report for consideration. Anyone, including private individuals, is entitled to submit comments to the Government.

The Government can also adopt rules without having to present a proposal to the Riksdag first. Such rules are known as ordinances. The Instrument of Government sets out what must be decided by law and what can be decided in an ordinance.

There is no Constitutional Court in Sweden, nor any abstract norm control. Instead, when a court is dealing with a case, it is obliged to control the legal basis for the decision and must disregard any act or statute which is in conflict with the Constitution or superior norms. During an ongoing individual case there exists a right of judicial review, meaning that courts and other public bodies have the right to override laws that are contrary to the Constitution and thereby also contrary to EU law. The Swedish right of judicial review for courts is regulated in Chapter 11 Section 14 of the Instrument of Government for Government and in Chapter 12 Section 10 of the Instrument of Government for authorities.

Since there is a need for an individual case in order to also bring up questions on implementation of EU environmental legislation and other regulatory acts, the rules on standing are the same as in any other individual environmental case in Sweden. The main rules for individuals may be found in Chapter 16 Section 12 of the Environmental Code and in Section 42 of the Administrative Procedure Act, and the main rules for NGOs may be found in Chapter 16 Section 13 of the Environmental Code. When a case is open, the individual and NGO with standing may also argue that EU legislation has not been implemented correctly into Swedish law. It is also possible in an ongoing case for individuals and NGOs to bring a legal challenge before the court to ask for the possibility to get a preliminary ruling concerning the interpretation of EU legislation according to Article 267 TFEU.

## 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 administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court’s obligation to examine the case on its own initiative applies not only to material or procedural issues, but also issues such as whether EU legislation is implemented in a correct way. The Court is bound by the claims of the parties, though not the causes of action invoked, and can base its judgment on circumstances other than those invoked by the parties.

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

Decisions made by the County Administrative Boards according to the Environmental Code and municipal decisions on planning according to the Planning and Building Act can be directly appealed to the Land and Environment Court. In principle, all other decisions from the municipality are appealed via the County Administrative Board prior to challenge in Court.

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

There are no requirements under the Swedish Environmental Code regarding participation in the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement has been issued, it may be appealed by anyone who is adversely affected by the decision.

When it comes to a decision to adopt, amend or repeal a detailed plan or area regulations according to the Building and Planning Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. A person may only appeal a decision on a detailed development plan if they have submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinions have not been considered.

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?

Normally a permit or plan cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a "go-ahead decision" enabling the applicant to start their activity. If a go-ahead decision has been granted, the public concerned can ask the court for an injunction of that decision.

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?

There are no costs for bringing a case to court according to these rules, not even if the case is lost.

Because of this, there is no need for rules to safeguard against the cost being prohibitive.

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]

All parties in an ongoing case may petition that the court trying the case request a preliminary ruling from the EU Court. This may be done regardless of which court is reviewing the case. It is up to the court to decide whether a preliminary ruling is necessary.

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

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

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

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

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

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

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