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?

All administrative decisions in the environmental area can be challenged before administrative courts according to the general rules of the Law on Administrative Proceedings (any interested person can apply to a court for protection of their infringed right, contested right or interest protected under law; the appeal may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission)). Special sectoral legislation can provide special rules on standing.

Administrative procedure law does not include a general rule for an administrative review. But several special legal acts (e.g. the Law on Territorial Planning, the rules regarding the informing and participation of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management) prescribe such an administrative review as a requirement for a court action.

According to Article 7 (8) of the Law on Environmental Protection, the public has a lot of possibilities for challenging decisions in the area of the environment.

In light of the national case-law, access to courts in environmental matters can be considered effective.

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

The administrative authority and the court can review both procedural and substantive legality.

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

As a general rule, administrative review is not compulsory. Only in the cases prescribed by law is the exhaustion of administrative review procedures prior to recourse to judicial review procedures a requirement of the court action. The largest area of such decisions is decisions concerning territorial planning documents.

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.?

As a general rule, participation in the public consultation phase of the administrative procedure is not compulsory. Only in the cases prescribed by law is participation in the public consultation a requirement of the court action. The largest area of such decisions is decisions concerning territorial planning documents.

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

According to Article 3 of the Law on Administrative Proceedings, the administrative court shall settle disputes over issues of law in public administration. The court shall not offer assessment of the disputed legal acts and actions (omissions) from the point of view of political or economic expediency and shall only establish whether or not, in a particular case, there has been violation of a law or any other legal act, whether or not the entity of public administration has acted within the limits of its discretion, and whether or not the legal act or action (omission) complies with the objectives and tasks for which purpose the institution has been set up and vested with powers.

The administrative court is not bound to allegations specifically presented in the appeal. The court is obliged to "actively" participate in the proceeding. It can review all aspects of the contested decision.

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

According to the Law on Administrative Proceedings, each party has equal rights in the procedure. The court must explain to the parties their procedural rights and duties, warn them of the consequences of the performance of or non-performance of procedural actions, and assist said persons in exercising their procedural rights (Article 12 of the Law on Administrative Proceedings). Administrative courts have an obligation to give guidance to the parties in order to ensure that all parties have equal opportunities to present their arguments and submit evidence.

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

There are several categories of case which should be resolved within the time limit set by special laws (e.g. cases about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits, refusal or cancellation of asylum, cases about dismissal of a public or municipal servant). Environmental cases are not assigned to urgent cases.

The Law on Administrative Proceedings sets out the time limits for the court and for the parties, e.g.: after the court has received a complaint/application/petition, the president or the judge of the administrative court shall, within 7 business days, decide on the issue of acceptance thereof (Article 33 (1) of the Law on Administrative Proceedings); as a rule, the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the judge or the court shall hear the petition for securing the claim within no more than 3 business days from receipt thereof, without notifying the respondent and other participants in the proceedings (Article 70 (4) of the Law on Administrative Proceedings); after hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 business days, and, after hearing the case regarding the legitimacy of regulatory administrative act, for no longer than one month (Article 84 (5) of the Law on Administrative Proceedings); the claimant shall have the right to specify, change the basis of complaint/application/petition or the subject matter within 14 calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3) of the Law on Administrative Proceedings); the respondent has to present to the court their opinions within the specified time limit, which is usually at least 14 calendar days from the day of receipt of a transcript (digital copy) of the complaint/application/petition (Article 67 (1) of the Law on Administrative Proceedings) etc.

The Law on Territorial Planning and other implementing legal acts set out terms for the actions of the organiser of the particular plan, for the institutions and for the public participating in the planning procedure.

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

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in cases of need of temporary regulation of the situation related to the disputed legal relations (Article 70 of the Law on Administrative Proceedings).

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

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, he should pay a stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers' assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay a stamp duty in the amount of 30 EUR (in the electronic cases 75 per cent of the sum of stamp duty) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court's judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

The prevailing party to the proceedings shall be entitled to recover costs from the non-prevailing adverse party (Article 40 (1) of the Law on Administrative Proceedings).

There is a recommendation from Minister of Justice and the Chairman of Bar concerning lawyer fees (Ministry of Justice Order No. 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using the coefficients which are based on the Lithuanian Government approved the minimum monthly salary. An estimation of lawyer fees in the case of the legal aid is regulated by Order of the Ministry of Justice No 1R-332 from 2020.

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

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

The procedure of the SEA is regulated by the Resolution of the Government of the Republic of Lithuania On Approval of the Procedure for Strategic Assessment of Environmental Impact of Plans and Programmes (approved by Resolution No. 967 of the Government from 2004) (SEA Resolution).

Article 44 of the SEA Resolution sets the common rule that disputes in the area of SEA shall be examined in accordance with the procedure laid down by laws. There are no special rules on standing for individuals and NGOs. The common rules on access to justice of the Law on Administrative Proceedings shall be applied (e.g. one month term, protection of the infringed right or interest protected under law). The special standing rules are foreseen in the special legal acts, e.g. in the Law on the Territorial Planning.

According to Article 6 of the SEA Resolution, the SEA is performed in the cases of:

1. preparation of a plan or programme (or amendment to the plan or programme) intended for the development of industry, energy, transport, telecommunications, tourism, agriculture, forestry, fishery, aquaculture, waste management, preparation of a special territorial planning document, detailed plan or land management project which sets the framework for the development of the economic activities listed in Annexes 1 and 2 of the Law on EIA and which is prepared for an area of more than 10 square kilometres; preparation or amendment of a general plan;
2. implementation of a plan or programme related to the Natura 2000 sites and the State Service for Protected

Areas determines that implementation of such a plan or programme (separately or together with other plans or programmes) may have significant consequences on the Natura 2000 sites;
3. during the screening, a decision is made that SEA of a plan or programme is required.

The participation of the individuals and NGOs on decision-making in territorial planning procedure is regulated by the Law on Territorial Planning and the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation on Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government from 1996). There are special rules regarding access to justice:

According to Article 49 (4) of the Law on Territorial Planning, representatives of the public concerned, other natural and legal persons concerned shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where:

1. they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights;
2. due to reasons recognised by the court as serious, they could not have been involved in the publicity procedures of territorial planning and lodged complaints or reports regarding the decisions relating to territorial planning adopted by the entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document.

According to Article 49 (6) of the Law on Territorial Planning, the period of limitation for entities defending the public interest to make a claim in relation to contesting the approved territorial planning documents, their solutions or administrative acts approving them shall be 20 working days from the date of issuance of a document permitting construction based on the territorial planning document sought to be contested, but not later than two years from the date of entry into force of the approved territorial planning document. A limitation period of two years provided for in this paragraph shall be definitive.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts (plans and programmes fall into one of these categories). According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court with an application for review of conformity of a regulatory administrative act (part thereof) with a law or a regulation issued by the Government shall be vested in the members of the Seimas, ombudsperson of the Seimas, children rights protection ombudsperson, equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the laws to perform public functions.

Other persons shall have the right to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation when a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The public concerned does not have standing for the review of conformity of a regulatory administrative act (decision relating to general plan or to special territorial planning document).

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

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The court is obliged „actively" participate in the proceeding by asking for evidence, appointing witnesses, experts, etc. The court has no limited control. It can review all aspects of the contested decision. Annex 1 of the SEA Resolution sets the criteria for the determination of significance of the impact of plans and programmes. Annex 2 of the SEA Resolution determines information which shall be involved in the report on the SEA. These criteria and information can be controlled by the court.

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

According to Article 33 (2) of the Law on Administrative Proceedings, the court shall by virtue of an order declare the complaint not receivable if the claimant has not complied with the procedure for extrajudicial consideration of the case established by the law for the cases of the said category. There is no common rule for all plans and programmes.

Having proof or legal basis for believing that the public interest specified in Article 8(1) of the Law on Territorial Planning has been violated, the public concerned shall have the right to defend the public interest in territorial planning and to apply to the institution protecting the public interest in the field in which the violation of the public interest has been committed or to the prosecutor requesting an investigation of the possible cases of violation of the public interest (Article 49 (5) of the Law on Territorial Planning). So the defence of the public interest in territorial planning is possible before the institution protecting the public interest or the prosecutor.

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 the procedure of the preparation of a territorial planning document representatives of the public concerned, other natural and legal persons concerned shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights (Article 49 (4) of the Law on Territorial Planning).

According to Article 37 of the Law on Territorial Planning, the proposals regarding territorial planning documents shall be submitted to the organiser of planning in writing. The reply provided by the organiser of planning may, within 10 working days, be appealed against to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents for projects of importance to the State in Article 23 of the Law on Territorial Planning. No later than within 10 working days from the date of submission by the organiser of planning of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

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

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases concerning complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers'

assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court's judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative case. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

The prevailing party to the proceedings shall be entitled to recover costs from the non-prevailing adverse party (Article 40 (1) of the Law on Administrative Proceedings).

There is a recommendation from the Minister of Justice and the Chairman of the Bar concerning lawyers' fees (Ministry of Justice Order No. 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using coefficients based on the Lithuanian Government's approved minimum monthly salary. An estimation of lawyers' fees in the case of legal aid is regulated by Order of the Ministry of Justice No. 1R-332 from 2020.

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[3]

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

Representatives of the public concerned and other natural and legal persons may be actively involved in the publicity procedures of territorial planning. These procedures should be guaranteed for all territorial planning documents which do not fall under the regulation of the SEA Resolution but under the regulation of the Law on Territorial Planning.

The participation of individuals and NGOs in decision-making in territorial planning procedure is regulated by the Law on Territorial Planning and the Resolution of the Government of the Republic of Lithuania on Public Information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996). There are special rules regarding access to justice.

According to Article 49 (4) of the Law on Territorial Planning, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where:

1. they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights;
2. for reasons recognised by the court as serious, they could not have been involved in the publicity procedures of territorial planning and lodged complaints or reports regarding the decisions relating to territorial planning adopted by the entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document.

According to Article 49 (6) of the Law on Territorial Planning, the period of limitation for entities defending the public interest to make a claim in relation to contesting the approved territorial planning documents, their solutions or administrative acts approving them shall be 20 working days from the date of issuance of a document permitting construction based on the territorial planning document sought to be contested, but not later than two years from the date of entry into force of the approved territorial planning document. A limitation period of two years provided for in this paragraph shall be definitive.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children's rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions. Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings).

There are other plans and programmes which are not territorial planning documents, e.g. land holding projects (land use planning projects for land reform; projects of formation and rearrangement of land parcels; projects for taking land for public needs; land consolidation projects) (Article 37 of the Law on Land); plans on protection zones etc.

According to Article 44 of the Law on Land, disputes regarding decisions taken by state and municipal institutions related to land management shall be investigated in accordance with the procedure laid down in the Law on Administrative Proceedings. The land owner or another user may apply for compensation for damage incurred due to the actions of a state or municipal institution when drafting and implementing the land use planning documents to the institution that has taken the decision to approve the land use planning document, or shall have the right to claim damages in the court proceedings. A person must apply to the institution that has taken the decision to approve the land use planning documents not later than within one month after the day they found out about the occurrence of the damage. Disputes regarding the amount of and compensation for damage shall be settled in court in the manner prescribed by law.

There are several special legal acts regulating the participation of the public. E.g., according to Articles 58-61 of the Rules of the Projects of Formation and Rearrangement of Land Parcels, approved by Order of the Minister of Agriculture and the Minister of Environment No. 3D-452/D1-51 of 2004, proposals of representatives of the public regarding projects of formation and rearrangement of land parcels shall be submitted to the project organiser in writing. The reply provided by the project organiser may, within 10 working days, be appealed to the National Land Service. A decision of the National Land Service shall be revoked by the court.

In light of the national case-law, access to national courts can be considered effective.

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

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations where they are considered as belonging to the decision. The court is obliged to "actively" participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

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

According to Article 33 (2) of the Law on Administrative Proceedings, the court shall, by means of an order, declare the complaint not receivable if the claimant has not complied with the procedure for extrajudicial consideration of the case established by the law for cases of the said category. There is no common rule for all plans and programmes.

Having proof or legal basis for believing that the public interest specified in Article 8(1) of the Law on Territorial Planning has been violated, the public concerned shall have the right to defend the public interest in territorial planning and to apply to the institution protecting the public interest in the field in which the violation of the public interest has been committed, or to the prosecutor requesting an investigation of possible cases of violation of the public interest (Article 49 (5) of the Law on Territorial Planning).

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 the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (4) of the Law on Territorial Planning).

There are several other legal acts which set a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. E.g., proposals of representatives of the public regarding projects of formation and rearrangement of land parcels shall be submitted to the project organiser in writing. The reply provided by the project organiser may, within 10 working days, be appealed to the National Land Service. A decision of the National Land Service shall be revoked by the court. According to Article 37 of the Law on Territorial Planning, proposals regarding territorial planning documents shall be submitted to the planning organiser in writing. The reply provided by the planning organiser may, within 10 working days, be appealed to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents of projects of importance to the State in Article 23 of the Law on Territorial Planning. Not later than within 10 working days from the date of submission by the planning organiser of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

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

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omissions in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers' assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court's judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

There is no express statutory reference to a requirement that costs should not be prohibitive.

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

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

The procedure of preparing plans and programmes does not depend on whether the basis for the preparation of such plans and programmes comes from the EU, international or national law. The possibility of administrative review or legal challenge before the national courts depends on the type of document and its legal status.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children's rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned shall have the right to file, in accordance with the procedure laid down by laws of the Republic of Lithuania, a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

The persons have a right to file a complaint regarding the protection of the environment and to ask the court to initiate the review of the normative (regulatory) administrative act.

If there is a special territorial planning document or detailed plan, the information, consultation and participation procedure is regulated by the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of1996).

There is a special legal act which sets out the rules regarding the informing and participation of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management (approved by Order of the Minister of Environment No. D1-381 from 2005). According to Article 8 of this Order, representatives of the public have a right to submit proposals to the institution which is preparing the plan or programme. According to Articles 12 and 13 of the Order, the institution shall, on its website, provide persons who have submitted proposals with a reasoned reply and shall inform the public about the adoption of the plan or programme and about the reasons.

There are no other special legal standing rules foreseen in the aforementioned acts.

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 different rules of standing regarding individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children's rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

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

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations where they are considered as belonging to the decision. The court is obliged to "actively" participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

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 no general rule that administrative review is necessary prior to recourse to judicial review procedures. The requirement of exhaustion of administrative review shall be foreseen in the special legal acts.

If there is a territorial planning document, Article 49 (4) of the Law on Territorial Planning sets out the requirement for participation in the publicity procedures of territorial planning, including administrative review.

If there are plans and programmes in the areas of air and water protection and waste management which fall under the regulation of Order of the Minister of Environment No. D1-381, the submission of the proposals to the institution which is preparing the plan or programme is a requirement for the judicial review.

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 the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (5) of the Law on Territorial Planning).

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

According to Article 3 of the Law on Administrative Proceedings, the administrative court shall settle disputes over issues of law in public administration. The court shall not offer assessment of the disputed legal acts and actions (omissions) from the point of view of political or economic expediency and shall only establish whether or not, in a particular case, there has been violation of a law or any other legal act, whether or not the entity of public administration has acted within the limits of its discretion, and whether or not the legal act or action (omission)

complies with the objectives and tasks for which purpose the institution has been set up and vested with powers.

The administrative court is not bound to allegations specifically presented in the appeal. The court is obliged to "actively" participate in the proceeding. It can review all aspects of the contested decision.

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

According to the Law on Administrative Proceedings, each party has equal rights in the procedure. The court must explain to the parties to the proceedings their procedural rights and duties, warn them of the consequences of the performance or non-performance of procedural actions, and assist said persons in exercising their procedural rights (Article 12 of the Law on Administrative Proceedings). Administrative courts have an obligation to give guidance to the parties in order to ensure that all parties have equal opportunities to present their arguments and submit evidence.

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

There are several categories of case which should be resolved within the time limit set by special laws (e.g. cases about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits, refusal or cancellation of asylum, cases about dismissal of a public or municipal servant). Environmental cases are not assigned to urgent cases.

The Law on Administrative Proceedings sets out the time limits for the actions of the court and for the parties, e.g.: after the court has received a complaint/application/petition, the president or the judge of the administrative court shall, within 7 business days, decide on the issue of acceptance thereof (Article 33 (1) of the Law on Administrative Proceedings); as a rule, the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the judge or the court shall hear the petition for securing the claim within not more than 3 business days from receipt thereof, without notifying the respondent and other participants in the proceedings (Article 70 (4) of the Law on Administrative Proceedings); after hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 business days, and, after hearing the case regarding the legitimacy of regulatory administrative act, for no longer than one month (Article 84 (5) of the Law on Administrative Proceedings); the claimant shall have the right to specify, change the basis of complaint/application/petition or the subject matter within 14 calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3) of the Law on Administrative Proceedings); the respondent has to present to the court their opinions within the specified time limit, which is usually at least 14 calendar days from the day of receipt of a transcript (digital copy) of the complaint/application/petition (Article 67 (1) of the Law on Administrative Proceedings) etc.

The Law on Territorial Planning and other implementing legal acts set out terms for the actions of the organiser of the particular plan, for the institutions and for the public participating in the planning procedure. E.g., according to Article 25 (4) of the Law on Territorial Planning, prior to commencing the preparation of a document of complex territorial planning, the planning organiser, or a person authorised by them, shall apply in writing to the institutions specified in the Rules for the Preparation of Documents of Complex Territorial Planning requesting that they issue planning conditions within 15 working days (in the case of documents of municipal-level and local-level territorial planning, within ten working days) from the date of receipt of the application. If the planning conditions have not been issued within the set time limit and the planning organiser has not been informed of the reasons for refusal, the planning organiser shall have the right to commence the preparation of the document of complex territorial planning; according to Article 37 (2) of the Law on Territorial Planning, the reply provided by the planning organiser may, within ten working days, be appealed to the respective institution carrying out state supervision of territorial planning, etc.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the

situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents of projects of importance to the State in Article 23 of the Law on Territorial Planning. Not later than within 10 working days from the date of submission by the planning organiser of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

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

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omissions in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers' assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases, 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court's judgement is 15 EUR.

The amount of stamp duty is the same for all categories of administrative case. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[5]

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

The EU regulatory acts in the environmental area are implemented through laws, resolutions and decisions of the Government, regulatory acts of ministers, heads of Government bodies and other state institutions and bodies and collegial institutions, regulatory acts of municipal institutions. These are normative (regulatory) legal acts. Only subjects foreseen in the Constitution and in the Law on Administrative Proceedings have a right to challenge normative (regulatory) legal acts before courts.

According to Article 105 of the Constitution, the Constitutional Court shall consider and adopt a decision whether the laws of the Republic of Lithuania and other acts adopted by the Seimas are not in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court shall also consider if the following are not in conflict with the Constitution and laws:

1. acts of the President of the Republic;
2. acts of the Government of the Republic.

The President of the Republic, the Government, not less than 1/5 of all the members of the Seimas and the courts shall have the right to apply to the Constitutional Court. The right to file a petition with the Constitutional Court concerning the constitutionality of all above-mentioned legal acts is also granted to any person who believes that a decision adopted on the basis of such a legal act has violated their constitutional rights or freedoms and the person

has exhausted all legal remedies. Such a person may apply to the Constitutional Court only where, in the case concerning the decision violating their constitutional rights or freedoms, the final and non-appealable decision on the merits of the case or on rejecting the complaint is adopted by a court of general competence or an administrative court, i.e. such a decision of a court is adopted that precludes any further defence of the violated rights or freedoms of the person before the courts of general competence or the administrative courts. A petition concerning the violated constitutional rights or freedoms may be filed with the Constitutional Court not later than within 4 months of the day that the final and non-appealable decision of the court came into force.

According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court with an application for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children's rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions. The right to apply to the administrative court with a petition for review of conformity of a regulatory administrative act issued by the entity of municipal administration with a law or Government regulation shall also be vested in the Government representatives supervising the activities of municipalities (Article 112 (2) of the Law on Administrative Proceedings).

Other persons shall have the right to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings).

The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court. The right to file a petition with the Constitutional Court concerning the constitutionality of laws of the Republic of Lithuania and other acts adopted by the Seimas, the Government or the President of the Republic is also granted to any person who believes that a decision adopted on the basis of such a legal act has violated their constitutional rights or freedoms and the person has exhausted all legal remedies.

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

The competence of the courts regarding review of normative (regulatory) acts is the same as in other administrative matters. Both procedural and substantive legality of the challenged normative (regulatory) act can be reviewed.

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

The requirement of the constitutional complaint is the exhaustion of all legal remedies. There is a requirement of exhaustion of administrative review procedures for contesting of territorial planning documents (general plans, special plans).

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.?

The Law on Legislative Framework sets out the principle of public consultation. According to Article 7 of the Law on Legislative Framework, the public shall have a possibility to submit proposals relating to the legislative initiatives and draft legal acts published in the Legislative Information System, as well as to monitor the carrying out of the legal regulation. The public must be consulted in due time and on essential issues (effectiveness of consultation), and to the extent necessary (proportionality of consultation). Methods of public consultation and ways of recording the results shall be selected by the entities initiating public consultation. Information on the results of public consultation must be provided to the entity adopting a legal act. Participation in the public consultation phase is not necessary.

If the special legal act sets out a requirement for participation in the public consultation phase, it is the requirement for legal standing before the national courts.

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (5) of the Law on Territorial Planning).

According to Article 37 of the Law on Territorial Planning, the proposals regarding territorial planning documents shall be submitted to the planning organiser in writing. The reply provided by the planning organiser may, within 10 working days, be appealed to the respective institution carrying out state supervision of territorial planning.

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?

According to Article 67-2 of the Law on the Constitutional Court, having regard to a reasoned request submitted by the petitioner to suspend the execution of the decision of the court, the Constitutional Court may suspend the execution of the decision of the court in exceptional circumstances where the constitutional rights or freedoms of the petitioner would be irreparably violated due to the execution of the decision of the court or where suspending the execution of the decision of the court is necessary for reasons of public interest. A request to suspend the execution of the decision of the court must be submitted together with the respective petition requesting an investigation into the compliance of a legal act with the Constitution or laws.

According to Article 26 of the Law on the Constitutional Court, in cases where the Constitutional Court receives a submission by the President of the Republic or a resolution of the Seimas, the Constitutional Court shall carry out a preliminary investigation within three days. If the Constitutional Court adopts a decision to accept the petition for consideration, the President of the Constitutional Court shall immediately announce that the validity of the act in question is suspended from the day of the official publication of this announcement in the Register of Legal Acts until the ruling of the Constitution Court concerning this case is published.

According to Article 70 (3) of the Law on Administrative Proceedings, provisional measures may be as follows:

1. granting of a restraining injunction against certain actions;
2. stay of execution under the writ of execution;
3. temporary suspension of the validity of the disputed individual legal act, as well as the granting of subjective rights to another person (not the claimant);
4. other measures applied by the court or the judge.

The administrative courts have no possibility to suspend the validity of a disputed normative (regulatory) legal act until the announcement of the effective decision of the administrative court on recognition of the relevant regulatory administrative act (or part thereof) as illegal. Where necessary, the administrative court may suspend the validity of the regulatory administrative act (or part thereof) recognised as illegal until the coming into effect of the court decision (Article 118 (3) of the Law on Administrative Proceedings).

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?

If the person submits an appeal to the administrative court regarding the breach of their rights or interests, general rules of the Law on Administrative Proceedings regarding stamp duty and other costs apply.

In the case of an abstract application for review of legality of a regulatory administrative act, no stamp duty is required.

According to Article 39 of the Law on the Constitutional Court, expenses incurred by the institutions participating in the case in relation to their attendance and participation in proceedings before the Constitutional Court shall be compensated by the institutions and establishments that they represent.

After, subsequent to a petition by a person, a law or other act of the Seimas, an act of the President of the Republic, or an act of the Government that served as a basis for adopting a decision violating the constitutional rights or freedoms of the person is declared by the Constitutional Court to be in conflict with the Constitution or laws, the necessary and justified expenses incurred by the petitioner in relation to participation in the proceedings before the Constitutional Court shall be compensated by the state institution that adopted the legal act (or part thereof) declared to be in conflict with the Constitution. The Government, or an institution authorised by it, shall determine the maximum amounts of compensation for expenses relating to participation in proceedings before the Constitutional Court and the procedure for their payment. Maximum amounts of compensation for expenses are regulated by Order of the Minister of Justice No. 1R-261 in 2019.

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]?

Only subjects foreseen in the Law on Administrative Proceedings can challenge national normative (regulatory) legal acts directly by appeal in court. Other subjects have the right to ask the court to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court.

It is only one option to apply directly to the court regarding the decision of the European Commission foreseen in the Law on Administrative Proceedings - the State Data Protection Inspectorate shall submit a petition to apply to a competent legal authority of the European Union regarding the decision of the European Commission to the Supreme Administrative Court of Lithuania in cases specified in the Law on the Legal Protection of Personal Data (Article 122^1 of the Law on Administrative Proceedings). Having examined the Petition on the Decision of the European Commission, the Supreme Administrative Court of Lithuania shall adopt one of the following decisions: 1) to apply to a competent judicial authority of the European Union with a petition to adopt a prejudicial decision according to Article 267 TFEU; 2) to reject the petition of the State Data Protection Inspectorate on the Decision of the European Commission (Article 1223 of the Law on Administrative Proceedings).

In other cases, the court applies to a competent judicial authority of the European Union for the prejudicial decision on the issue of interpretation or validity of the laws of the European Union. Any party in the proceedings may request that the court apply to a competent judicial authority of the European Union for the prejudicial decision, but this is at the discretion of the court.

[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 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 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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