Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

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

As mentioned in section 1.3., the rules on standing for individuals and NGOs are to be found in the relevant pieces of environmental legislation in relation to administrative appeals to the appeals boards, e.g. the Environment and Food Appeals Board and the Planning Appeals Board. Standing for individuals may vary from a broad access e.g. in planning issues to a narrower requirement of significant and individual interest in pollution cases. Regarding nature protection issues, neighbours will normally not have standing. Standing for NGOs is generally broad including NGOs safeguarding environmental, nature protection or recreational interests. Also local NGOs will normally have access to administrative appeals although with some variations. In general there is a four-week deadline for bringing an administrative appeal to the appeals boards.

As regards standing for the courts, there are no specific rules apart from the general standing requirement of having a significant and individual interest. However, the courts will normally accept standing for those individuals and NGOs that have access to administrative appeals, and perhaps even a broader circle. There is generally a six-month deadline for bringing an administrative decision to the court. In general, standing before the courts does not appear to be interpreted narrowly, but there are only a limited number of court cases.

In general, the effectiveness of access to the administrative appeals boards is considered to be quite good. Considering the very limited number of court cases brought by NGOs, court procedures are unlikely to be regarded as an effective option, most likely due to potential costs of a court case.

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?

For administrative appeals, there is in general a full review by the appeals boards unless otherwise specified. This includes a review of the procedural and substantive legality of administrative decisions as well as the merits. In planning matters, the review by the Planning Appeals Board is restricted to matters of legality, including procedural as well as substantive legality, but not the merits (or discretionary) parts of a planning decision.

For judicial review by the courts there is in principle a full review, but the courts will be reluctant to review the merits of a case.

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

There is in general no requirement of exhaustion of administrative review procedures.

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

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

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

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

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

Ensuring fair and equitable access to review of administrative decisions is primarily ensured through the administrative appeal system to the administrative appeals boards, see e.g. above 1.7.3

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

There is no specific implementation of this notion in Danish legislation.

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?

The rules on suspensive effect and injunctive relief vary from one sector to another in relation to administrative appeals. In general, appeals of plans or permits will not have suspensive effect. Appeals of exemptions granted according to the Nature Protection Act will, however, have suspensive effect, unless otherwise determined by the appeals board. In relation to judicial review by the courts, the general rule is that an appeal will not have a suspensive effect.

There are very few explicit rules on injunctive relief, e.g. Sec. 53 of the Environmental Assessment Act regarding administrative appeals.

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?

The general rules on costs and loser pays regarding court review apply, see above 1.7.3. In situations where there is no access to administrative appeals, it may have been specified either in the legislation or in the preparatory works that the courts must ensure that costs are not prohibitively expensive.

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 Act on Environmental Assessment provides for access to administrative appeals regarding screening decisions and decisions on environmental assessments of plans and programmes. In general, the Act refers to the administrative appeal options according to the relevant legislation under which the plan or programme is adopted. If there are no administrative appeal options under the relevant legislation, then there will be access to appeal to the Environment and Food Appeals Board, cf. Act on Environmental Assessment. There is no access to administrative appeals for plans and programmes adopted by acts of Parliament.

Individuals having a legal interest have access to administrative appeals as well as nationwide NGOs safeguarding environmental and nature protection interests or other land use interests. An appeal must be submitted within four weeks from the screening decision or environmental assessment decision.

There are no specific rules on access to judicial review in matters covered by the SEA Directive, apart from a six-month deadline.

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 scope of administrative review and judicial review will follow the rules in the relevant legislation. However, it will normally cover both procedural and substantive legality. In some circumstances, e.g. regarding river basin district plans, administrative appeal is restricted to issues regarding the adoption of the plans only.

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

There is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

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

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

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

There are no specific rules on the suspensive effect or injunctive relief in relation to SEA matters. In general, administrative appeals regarding SEA will follow the appeal rules of the relevant plan, e.g. the Planning Act.

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

The Act on Environmental Assessment stipulates that in court cases the court must ensure that costs are not prohibitively expensive. Otherwise, the general rules on costs etc. apply, see above 1.7.3.

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]

There are no specific rules for this type of plan in Denmark. The Act on Environmental Assessment applies a very broad scope for any type of plans or programmes, including informal plans or programmes. So, we refer to the rules above, see 2.2.

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

Plans and programmes required by the EU legislation will fall under the scope of the Act on Environmental Assessment, see above 2.2. There might, however, be some specific rules in particular regarding the scope of review in administrative appeals of such plans, e.g. for river basin district plans, where only procedural issues regarding the planning process can be appealed. Not all plans or programmes required to be prepared under EU legislation can be subject to administrative appeals, but they can be subject to court review, e.g. action programmes under the Nitrates Directive.

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 Act on Environmental Assessment provides for access to administrative appeals regarding screening decisions and decisions on environmental assessments of plans and programmes. In general, the Act refers to the administrative appeal options according to the relevant legislation under which the plan or programme is adopted. If there are no administrative appeal options under the relevant legislation, then there will be access to appeal to the Environment and Food Appeals Board, cf. Act on Environmental Assessment. There is no access to administrative appeals for plans and programmes adopted by acts of Parliament.

Individuals having a legal interest have access to administrative appeals. The same applies to nationwide NGOs safeguarding environmental and nature protection interests or other land use interests. An appeal must be submitted within four weeks from the screening decision or environmental assessment decision.

There are no specific rules on access to judicial review in matters covered by the SEA Directive, apart from a six-month deadline.

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 is no access to administrative appeal for plans and programmes adopted by acts of Parliament, but they can be brought to the courts.

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 scope of administrative review and judicial review will follow the rules in the relevant legislation. However, it will normally cover both procedural and substantive legality. In some circumstances, e.g. regarding river basin district plans, the scope of administrative appeal is restricted to procedural issues regarding the adoption of the plans only.

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 legal requirement on the exhaustion of administrative appeals before bringing a case to the court.

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

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

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

There are no grounds/arguments precluded from the judicial review phase. As regards administrative appeals, see above 2.4.3

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

This is not specified in Danish legislation.

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

The notion of ‘timely’ is not specified in Danish legislation. There are, however, some indicative time limits as regards court procedures, see above.

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

There are no specific rules on the suspensive effect or injunctive relief in relation to SEA matters. In general, administrative appeals regarding SEA will follow the appeal rules of the relevant plan.

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

The Act on Environmental Assessment stipulates that in court cases the court must ensure that costs are not prohibitively expensive. Otherwise, the general rules on costs etc. apply, see above 1.7.3

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?

In general, there are no options for administrative appeals regarding executive regulations and/or generally applicable legally binding normative instruments. If, however, such executive regulations are to be considered a plan or a programme falling under the scope of the SEA requirements under the Act on Environmental Assessment, the rules on administrative appeals in the Environmental Assessment Act will apply as regards the environmental assessment.

There are no specific rules on judicial review of executive regulations. However, the general rule on judicial review in Sec. 63 of the Danish Constitution also includes access to review of executive regulations and their legality. Thus, executive regulations can be challenged in courts e.g. as regards their legal basis in the relevant legislation and their compliance with EU law.

So, for the following points 1-6 we refer to the general rules described above.

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?

If the Environmental Assessment Act applies, issues of legality (procedural and substantive) can be subject to administrative appeals.

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

There is no legal requirement on the exhaustion of administrative appeals before bringing a case to the 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.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

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

There are no specific rules on the suspensive effect or injunctive relief.

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

The Act on Environmental Assessment stipulates that in court cases the court must ensure that costs are not prohibitively expensive. Otherwise, the general rules on costs etc. apply, see above 1.7.3.

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]?

There are no specific rules on this in Danish legislation.

[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]ECLI:EU:C:2017:774

Last update: 28/07/2021