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) 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?

The Habitats Directive and the Birds Directive have been transposed into Finnish law mainly by the Nature Conservation Act (1096/1996). The right of appeal according to the Nature Conservation Act is wider than under the standard provisions of the Administrative Judicial Procedure Act (AJPA), mainly in regard to certain NGOs. The right to appeal is granted to those whose rights or interests are affected by the matter in question. In matters other than compensation, the local authority also has the right of appeal. In matters other than compensation and those involving certain derogations from protection orders, the right of appeal is also granted to any registered local or regional association whose purpose is to promote nature conservation or environmental protection. A decision taken by the Government concerning the adoption of a nature conservation programme can also be appealed by a corresponding national organisation or any other national organisation safeguarding the interests of landowners.

In addition, anyone who incurs inconvenience, as well as the above-mentioned local or regional NGO,s has the right to request the environmental authority to take coercive measures against someone who is acting contrary to the Nature Conservation Act (Section 57.2). The authority may upon this request forbid that person from continuing or repeating the offence or instance of negligence and require that he correct the unlawful situation or redress his negligence. A decision by the authority not to take action can be challenged in the administrative judicial procedure by the party making the request.

The same rules apply in principle for domestic and foreign NGOs, but in practice foreign NGOs can rarely be considered as local or regional associations in the meaning of the above-mentioned provisions.

According to the Hunting Act similar provisions on standing and access to justice to those in the Nature Conservation Act apply also to decisions by the Finnish Wildlife Agency concerning derogations from certain prohibitions under the Habitats Directive and the Birds Directive.

For activities falling within the scope of the Water Framework Directive, the provisions of the Environmental Protection Act (EPA) and the Water Act are of importance (for the provisions on access to justice of the EPA see also section 1.8.2). These acts cover water related activities listed in Article 11 of the Water Framework Directive and requiring prior authorisation or regulation. Both of these acts include some special provisions regarding the court proceedings. These provisions of the two acts are very similar due to the common history of water legislation and the fact that according to these two acts the permit procedures in the Regional State Administrative Agencies can be combined.

The right of appeal according to the EPA and the Water Act is somewhat wider than under the standard provisions of the AJPA, granted to persons whose rights or interests may be affected by the matter. The right of appeal is also provided for environmental NGOs, meaning registered associations or foundations whose purpose is to promote environmental, health or nature protection or general safeguarding of the environment and whose area of activity is subject to the environmental impact in question. The same rules apply to foreign NGOs. Certain authorities are

also entitled to appeal decisions under the EPA and the Water Act.

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. In the above-mentioned statutes, there are only a few provisions on administrative review e.g. in the EPA and the Water Act concerning decisions on monitoring and control plans of activities that have already been granted a permit under those acts. This means that in most of the environmental decisions the appeal period is thirty days and the appellate authority is the regionally competent administrative court or in case of environmental and water permits according to EPA and Water Act the Vaasa administrative court.

The general provisions of Administrative Procedure Act (APA) and Administrative Judicial Procedure Act (AJPA) on access to justice are central also when assessing access to justice in environmental matters. However, there are numerous special provisions in the Finnish environmental legislation on access to justice and especially the standing of NGOs, which is a special feature of the environmental law. These special provisions have since the 1990s gradually widened to cover a large number of activities and decisions related to the environment. The provisions on standing and access to justice in different acts can differ in their details and a clear overall picture can therefore be difficult to obtain. As an example, in some cases only local and regional environmental NGOs have a right to appeal whereas the right to appeal in other cases covers also national NGOs. The Aarhus Convention and the case law of the Court of Justice of the European Union have played an important role in this development of the legislation and in the case law of the Supreme Administrative Court, but also the coherence of the national legislation has been emphasised in the national case law (see KHO 2004:76, KHO 2011:49 and KHO 2019:97). In light of the national case law, access to national courts in environmental matters is guaranteed in an effective way.

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?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. The administrative appellate authority is competent to review both the procedural and substantive legality of decisions. The court's competence and responsibilities of review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings.

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

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request (Administrative Judicial Procedure Act, Section 7). An example of a provision concerning administrative review in the environmental matters described in this section is the decision of the fisheries authority to approve implementation plan for a fisheries obligation according to the Water Act; a request for administrative review has to be submitted to the permit authority, which is the Regional State Administrative Agency.

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.?

Participation during the administrative procedure is not a prerequisite for standing in court.

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

There are no provisions precluding certain grounds or arguments from the judicial review phase. The administrative court is not strictly bound to allegations specifically presented in the appeal. When it is called for, the court will assess the validity of material and technical findings, on which a decision has been based. However, courts have to ensure adherence to claims in their decision-making.

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

There are no specific provisions concerning a fair and equitable judicial procedure in the national legislation concerning the environmental decisions described in this section. According the Administrative Judicial Procedure Act (AJPA) the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. In the Vaasa administrative court, with nationwide competence in appeal matters under the Environmental Protection Act (EPA) and the Water Act, there are judges trained in natural and technical sciences in order to provide sufficient expertise. The Supreme Administrative Court has also appointed expert judges that participate in decision-making in cases under the EPA and Water Act. With regard to review of facts, the AJPA provides that the court must on its own motion obtain evidence to the extent that the impartiality and fairness of the procedure and the nature of the case so require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPA, Section 37).

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

There are no specific provisions concerning a timely judicial procedure in the national legislation on the decisions falling within the scope of EU environmental legislation. With regard to appeal proceedings in the administrative courts, there are no prescribed time limits for the majority of matters. The Constitution provides everyone with the right to have his or her case dealt with without undue delay in a court of law.

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 general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section, such as a water permit decision or a derogation from the prohibitions in the Nature Conservation Act, ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the permit despite appeals, either together with the permit decision or shortly thereafter through a separate decision. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

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?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)

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[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 (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 content and procedure related to SEA can only be challenged in connection to the decision-making procedure of the plan or programme in question. This means in practice that the provisions on judicial appeal concerning the strategic environmental assessment depend on the case and the sectoral legislation applicable to the plan or programme. The SEA Act contains a similar general reference to the sectoral statutes with regard to strategic environmental assessment of plans and programmes as the EIA Act concerning access to justice.

The Governmental Decree on the Assessment of the Effects of Certain Plans and Programmes (347/2005) includes a list of plans and programmes, for which a strategic environmental assessment according to the SEA Act is always required. Some of these plans and programmes, such as the national land use objectives under the Land Use and Building Act, are adopted by the Council of State, and others, such as the flood risk plans, by a Ministry. An appeal against these decisions of the Council of State or a Ministry is made directly to the Supreme Administrative Court. Other plans and programmes are adopted at the regional level, such as the regional waste plans. According to the Waste Act, the regional waste plans are adopted by the ETE Centres (centres for economic development, transport and the environment). An appeal against these regional decisions is submitted to the regional administrative courts.

Right of appeal pertains to individuals affected by the decision. Apart from municipal appeal, there is no actio popularis with regard to access to court. Nor are there any general provisions on the right of appeal of NGOs. Right of appeal is provided for NGOs by most of the sectoral statutes applicable to the plans and programmes listed in the SEA Decree.

Decisions to approve municipal land use plans (local master or detail plans) under the Land Use and Building Act (LUBA) can be challenged by means of municipal appeal with the regional administrative court. In addition to directly concerned parties, the right of appeal is granted to all members of the municipality. This includes registered associations domiciled in the municipality. In addition, the right of appeal is granted to any other registered local or regional organisation when the matter concerns its sphere of activity.

In addition to the above, also nationally active organisations are entitled to appeal against decisions to approve regional plans on certain grounds, specified in the Act. Since planning decisions are reviewed based on municipal appeal, the court's review is strictly confined to the grounds of illegality stated by the appellant. As an exception to the cassatory nature of the municipal appeal, the LUBA includes provisions that enable the court to make slight amendments to the plan under specified conditions. In other regards, the proceedings follow the general procedure under the Administrative Judicial Procedure Act.

In the Act on the Organisation of River Basin Management and Marine Strategy, there is a reference to the SEA Act stating that provisions on the environmental report that must be presented as part of the river basin management plan and the marine strategy document, are laid down in the SEA Act. An appeal against the Government's decision to approve the river basin management plan or the marine strategy document can be lodged at the Supreme Administrative Court. The right of appeal applies to anyone whose right, obligation or interest may be impacted by the decision, the municipality concerned, an authority supervising the public interest, and a registered local or regional association or foundation whose function is to promote environmental protection or nature conservation and whose operating area the river basin management plan concerns.

In the Flood Risk Management Act there is a similar reference to the SEA Act as in the Act on the Organisation of River Basin Management and Marine Strategy concerning the environmental report in connection to the flood risk management plans. An appeal against the decision of the Ministry of Agriculture and Forestry to approve the flood risk management plan can be lodged at the Supreme Administrative Court. A decision may be appealed by a party whose right, obligation or benefit may be impacted by the decision, relevant municipality, Regional Council or regional rescue service, an authority supervising the public interest and a registered local or regional association or foundation whose purpose is to promote environmental or nature protection or use of water resources and in whose territory the flood risk management plan is applicable.

In the Transport System and Highways Act there is also a reference to the SEA Act concerning the national plan for transport network. The Government's decision to adopt the plan for transport network can be appealed to the

Supreme Administrative Court.

SEA procedure on the Åland Islands is governed by the same regional act as the EIA procedure (Landskapslag om miljökonsekvensbedömning, 2018:31). The provision on SEA procedure in Chapter 3 of the Act are applied on plans and programmes adopted by the government and the municipalities of the Åland Islands. Appeals are lodged with either the Administrative Court of Åland or the Supreme Administrative Court, depending on the administrative authority whose consent decision is being challenged.

The Åland Islands have their own regional act governing plans and construction (Plan- och bygglag för landskapet Åland, 2008:102). The regional act provides two levels of plans: local master and detail plans. Like their counterparts under the LUBA, such plans are approved by the municipality and challenged by means of municipal appeal to the administrative court of Åland. In addition to directly concerned parties and members of the municipality, the right of appeal is granted to organisations registered in the region when the matter concerns its sphere of activity.

The general provisions of the Administrative Procedure Act (APA) and the Administrative Judicial Procedure Act (AJPA) on access to justice are central also when assessing access to justice in environmental matters. However, there are numerous special provisions in the Finnish environmental legislation on access to justice and especially on the standing of NGOs, which is a special feature of environmental law. These special provisions have gradually widened to cover a number of plans and programmes related to the environment. The provisions on standing and access to justice in different acts can differ in their details and a clear overall picture can therefore be difficult to obtain. As an example, in some cases only local and regional environmental NGOs have a right to appeal whereas the right to appeal in other cases covers also national NGOs. In light of the national case law, access to national courts in environmental matters is guaranteed in an effective way.

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 court's powers of review accord with the review of the decision to adopt the plan or programme. The fact that an assessment has been omitted altogether can always be invoked in the court according to Section 11 of the SEA Act.

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

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. At the moment there are no such provisions concerning the plans and programmes covered by the SEA Directive.

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.?

Participation during the administrative procedure is not a prerequisite for standing in court.

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 general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section, such as adoption of a nature conservation programme under the Nature Conservation Act, ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the plan despite appeals. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

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?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 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[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?

In Section 3 of the Act on the Assessment of the Effects of Certain Plans and Programmes on the Environment (SEA Act, 200/2005) there is a general obligation on the authorities to assess the effects of all plans and programmes that might have significant effects on the environment. This general obligation is not limited to the plans and programmes under the SEA Directive, which are listed in the Governmental Decree described in section 2.2. The SEA Act contains a similar general reference to the sectoral statutes with regard to strategic environmental assessment of plans and programmes as the EIA Act concerning access to justice. This means in practice that the provisions on judicial appeal concerning the strategic environmental assessment depend on the case and the sectoral legislation applicable to the plan or programme in question.

Apart from the plans and programmes covered by the SEA Directive and the Finnish SEA Act described in section 2.2 there are several plans and programmes that are relevant in connection to the question of access to justice in environmental matters. In general, the provisions of Administrative Judicial Procedure Act (AJPA) on standing and access to justice are applied to plans and programmes adopted by the state authorities and the provisions of Local Government Act on municipal appeal to plans and programmes at the local level of administration.

The Environmental Protection Act (EPA) lays down rules on the adoption of air quality protection plans according to the Directive on ambient air quality and cleaner air for Europe (2008/50/EC), emission reduction programmes according to the Directive on the reduction of national emissions of certain atmospheric pollutants (2016/2284/EU) and national noise abatement action plans according to the Directive relating to the assessment and management of environmental noise (2002/49/EC). The air quality protection plans are adopted by the municipalities (EPA, Section 145) and the national emission reduction plans are prepared by the Ministry of Environment and adopted by the Government (EPA, Section 149c). The noise abatement action plans are adopted by the municipalities or the Finnish Transport Agency depending on the areas concerned (EPA, Section 152). The provisions of public participation procedures guarantee all the persons and NGOs the right to participate in the preparation and modification or review of these plans (EPA, Sections 147, 149c, 152 and 204). There are no provisions on access to justice related to these plans in the EPA. This has been justified by the lack of a requirement for access to justice in the relevant EU directives and the nature of these plans as establishing a general framework for necessary national or regional measures. However, anyone can make a complaint to the Parliamentary Ombudsman or to the Chancellor of Justice if the relevant competent authorities fail to fulfil their responsibilities to prepare these plans or do not comply the public participation procedures or other relevant legal requirements while preparing these plans.

The special provisions in the Finnish legislation on access to justice and especially the standing of NGOs in environmental matters have gradually widened to cover several plans and programmes related to the environment. This means in practice that the provisions on standing and access to justice differ in their details and a clear overall picture can therefore be difficult to obtain. In light of the national case law access to national courts in environmental matters is guaranteed in an effective way.

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?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. The court's competence and responsibilities for review are the same as in other administrative and municipal appeal matters. When an administrative appeal has been lodged both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings. When a decision taken by a municipal authority is challenged by means of municipal appeal, the court's review is more strictly confined to the grounds of illegality stated by the appellant.

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

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request.

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.?

Participation during the administrative procedure is not a prerequisite for standing in court.

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 general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the plan despite appeals. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

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?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)

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

Apart from the plans and programmes covered by the SEA Directive and the Finnish SEA Act described in section 2.2 there are several plans and programmes that are relevant in connection to the question of access to justice in environmental matters. In general, the provisions of Administrative Judicial Procedure Act (AJPA) on standing and access to justice are applied to plans and programmes adopted by the state authorities and the provisions of Local Government Act on municipal appeal to plans and programmes at the local level of administration.

In section 2.3 certain plans under the Environmental Protection Act (EPA) are mentioned, since the provisions of the EPA are applied to the adoption of air quality protection plans according to theDirective on ambient air quality and cleaner air for Europe (2008/50/EC), emission reduction programmes according to the Directive on the reduction of national emissions of certain atmospheric pollutants (2003/35/EU) and national noise abatement action plans according to the Directive relating to the assessment and management of environmental noise (2002/49/EC).

The Water Framework Directive and the Marine Strategy Directive have been transposed into Finnish law by the Act on the Organisation of River Basin and Marine Strategy. In this Act there is a reference to the SEA Act stating, that provisions on the environmental report that must be presented as part of the river basin management plan and the marine strategy document, are laid down in the SEA Act. An appeal against the Government’s decision to approve the river basin management plan or the marine strategy document can be lodged at the Supreme Administrative Court. The right of appeal applies to anyone whose right, obligation or interest may be impacted by the decision, the municipality concerned, an authority supervising the public interest, and a registered local or regional association or foundation whose function is to promote environmental protection or nature conservation and whose operating area the river basin management plan concerns.

The maritime spatial plans according to the Directive establishing a framework for maritime spatial planning (2014/89/EU) are covered by the Chapter 8A of the Land Use and Building Act (LUBA). Drawing up the maritime spatial plans is the responsibility of the regional councils, which are in charge of other regional planning as well. The LUBA contains provisions on the planning procedure and the interaction with different stakeholders. However, the provisions on maritime spatial plans have been criticised because there are no clear stipulations on how the regional council’s decision to approve a maritime spatial plan can be challenged. The content of a maritime spatial plan has not yet been the object of a case in the courts.

The flood risk management plans according to the Directive on the assessment and management of flood risks (2007/60/EC) are regulated under the Flood Risk Management Act, which contains provisions on the planning procedure and participation and communication during the process. An appeal against the decision of the Ministry of Agriculture and Forestry to approve the flood risk management plan can be lodged at the Supreme Administrative Court. A decision may be appealed by a party whose right, obligation or benefit may be impacted by the decision, a relevant municipality, Regional Council or regional rescue service, an authority supervising the public interest and a registered local or regional association or foundation whose purpose is to promote environmental or nature protection or use of water resources and in whose territory the flood risk management plan is applicable. The provisions of the Land Use and Building Act concerning the appeal and right to appeal a decision concerning the approval of local plans apply to the appeal of a decision by a municipality concerning the approval of a flood risk management plan for stormwater and meltwater flood risks.

The special provisions in the Finnish legislation on access to justice and especially the standing of NGOs in environmental matters have gradually widened to cover several plans and programmes related to the environment. This means in practice that the provisions on standing and access to justice differ in their details and a clear overall picture can therefore be difficult to obtain. In light of the national case law, access to national courts in environmental matters is guaranteed in an effective way.

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)?

In general, the provisions of Administrative Judicial Procedure Act (AJPA) on standing and access to justice are applied to plans and programmes adopted by the state authorities. An appeal against the decision of the Council of State and also certain decisions by a Ministry to adopt a plan or a programme is lodged directly in the Supreme Administrative Court. An appeal against a decision by a regional state authority to adopt a plan or a programme is ledged in the regional administrative courts.

The provisions of Local Government Act on municipal appeal are applied to plans and programmes at the local level of administration. According to the Local Government Act the right of appeal is granted to all members of the municipality, in addition to directly concerned parties.

There is no regular review procedure concerning the decisions by a legislative body e.g. the Parliament of Finland or the Council of State when adopting normative instruments such as Acts or Decrees (see also section 2.5). There are some plans and programmes, such as the climate change policy plans and the annual climate change report according to the Climate Change Act, that are reported to the Parliament, but at the moment there are no plans or programmes that would be adopted directly by the Parliament. According to Section 8 of the AJPA an appeal against a decision by the Council of State (the government plenary session) is lodged in the Supreme Administrative 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 court's competence and responsibilities of review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings.

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

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. At the moment there are no provisions on a review procedure concerning plans and programmes required to be prepared under EU environmental legislation.

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.?

Participation during the administrative procedure is not a prerequisite for standing in court.

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

There are no provisions precluding certain grounds or arguments from the judicial review phase. The administrative court is not strictly bound to allegations specifically presented in the appeal. When it is called for, the court will assess the validity of material and technical findings, on which a decision has been based.

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

There are no specific provisions concerning a fair and equitable judicial procedure in the national legislation on the environmental decisions described in this section. According to the Administrative Judicial Procedure Act (AJPA), the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. The Supreme Administrative Court has appointed expert judges who participate in decision-making in cases under the Environmental Protection Act (EPA) and the Water Act and also the Act on the Organisation of River Basin Management and Marine Strategy. With regard to review of facts, the AJPA provides that the court must obtain evidence on its own motion to the extent that the impartiality and fairness of the proceedings and the nature of the matter require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPA, Section 37).

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

There are no specific provisions concerning a timely judicial procedure in the national legislation on the decisions falling within the scope of EU environmental legislation. With regard to appeal proceedings in the administrative courts, there are no prescribed time limits for the majority of matters. The Constitution provides everyone with the right to have his or her case dealt with without undue delay in a court of law.

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?

The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, some of the plans described in this section, like the water management plans, can be enforced despite appeals according to special provisions in the substantive law. The court is competent to suspend enforcement despite the special provisions if necessary. (This system of injunctive relief is described in more detail in section 1.7.2.)

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?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 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[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 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?

According to the Constitution of Finland (731/1999), the legislative powers are exercised by the Parliament, which has also adopted all the Acts that form the most important part of the environmental legislation. The President of the Republic, the Government and a Ministry may issue Decrees on the basis of authorisation given to them in the Constitution or in another Act. There is no Constitutional Court or other regular review procedure concerning the decisions by a legislative body e.g. the Parliament of Finland or the Council of State when adopting normative instruments such as Acts or Decrees. According to Section 74 of the Constitution of Finland, the Constitutional Law Committee of the Parliament must issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.

If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law must according to Section 106 of the Constitution give primacy to the provision in the Constitution. If a provision in a Decree or another statute at a lower level than an Act is in conflict with the Constitution or another Act, it may not be applied by a court of law or by any other public authority.

Normative instruments cannot usually be challenged directly by appeal in court. In order to obtain a court ruling on the implementation of an Act or Decree used to implement EU environmental legislation, a first instance decision from the authority applying that Act or Decree is generally required. In case of an omission of a national regulatory act, an individual can seek enforcement of environmental responsibilities based on EU law by approaching the competent municipal or state authority with a request for enforcement measures. Upon review of the decision of the municipal or state authority the national administrative court has to consider the conformity of the national legislation with EU legislation and the need to seek a preliminary ruling from the Court of Justice of the European Union of the interpretation or validity of the EU law according to the Treaty on the Functioning of the European Union.

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 court's competence and responsibilities for review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are subject to review, as well as underlying material and technical findings.

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

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request.

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.?

Participation during the administrative procedure is not a prerequisite for standing in court.

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?

Since the normative instruments cannot usually be challenged directly by appeal in court, the court is only competent to give execution orders concerning the decision of the authority applying the normative instrument in question. The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. (This system of injunctive relief is described in more detail in section 1.7.2.)

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?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 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?[4]

As explained above, normative instruments cannot usually be challenged directly by appeal in court. In order to obtain a court ruling on the implementation of an Act or Decree used to implement EU environmental legislation, a first instance decision from the authority applying that Act or Decree is generally required. The appellant can make a request to the national court to seek a preliminary ruling from the Court of Justice of the European Union (CJEU) on the interpretation or validity of the EU law according to the Treaty on the Functioning of the European Union. Upon review of the decision of the municipal or state authority, the national administrative court has to consider the need to seek a preliminary ruling. There are no provisions on requests for preliminary ruling from the CJEU in the national legislation.

The judgement of the CJEU of 26.10.2016 in case C-506/14, Yara Suomi Oy and Others, concerning Commission Decision 2013/448/EU on greenhouse gas emission allowance trading within the European Union, is an example of a case where certain provisions of the Commission decision were declared invalid by the CJEU after requests for preliminary ruling of the validity of that decision made by the appellants in the first hand to the Supreme Administrative Court in Finland and other national courts in several member states.

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

[2] 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.

[3] 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.

[4] 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.

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