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?

The system of national environmental legislation largely follows the structure of transposition of relevant EU sectoral directives by environmental components and factors. Despite the differences in their purpose, the EIA procedure, as well as the procedures under the special laws, constitute administrative authorisation for environmental interventions with a similar legal characteristic of an environmental permit , i.e. an administrative act favouring the subject of the act but with a specific subject to protect a common environmental value.

According to the regulations for drafting normative acts, after 2007 the EU directives, whose requirements are introduced in Bulgarian legislation, are indicated in the Additional Provisions section of the relevant legal act.

Biodiversity Act

The assessment of compatibility with the conservation objectives of the protected areas established in accordance with the Birds and Habitats Directives (appropriate assessment) shall be carried out jointly with the EIA and the SEA respectively, where the project, programme or investment proposal is subject to such an assessment according to Chapter Six of the EPA. Where the investment proposal, plan or programme does not fall within the scope of the EPA, pursuant to paragraph 3 of Art. 31 of the Biodiversity Act, the appropriate assessment is carried out in accordance with the Ordinance on appropriate assessment. The decisions of the competent authority may be appealed pursuant to the Administrative Procedure Code. The decisions of the first-instance court on appeals against decisions of the competent body on assessment of plans, programmes and investment proposals related to the implementation of sites which are defined as sites of national importance by an act of the Council of Ministers and are sites of strategic importance are final. (Art.31(19) Biodiversity Act)

Genetically Modified Organisms Act

The GMO Act introduces the requirements of Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC and of Directive 2009/41/EC of the European Parliament and of the Council of 6 May 2009 on the contained use of genetically modified micro-organisms. The GMO Act explicitly stipulates that interested parties may appeal under the Administrative Procedure Code against refusals to register premises for contained use of GMOs and refusals to issue permits for contained use of GMOs and permits to release GMOs into the environment. Decisions to register premises for contained use of GMOs and to issue permits for contained use of GMOs and permits to release GMOs into the environment can be challenged by the interested parties under the general appeal procedures against administrative acts.

Water Act

Art. 1 states that the purpose of the Act is to ensure integrated water management in the public interest and for the protection of the health of the population. The Water Act transposes Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy and has the role of a framework law in the sector of water management.

The issuance of administrative acts for water use (permits) – permits for water abstraction and permits for the use of a water body are regulated in Chapter Four of the Water Act. There are cases when a permit is not required, as well as the special regimes of extraction of mineral waters which are exclusive state property through concessions under the Concessions Act. The permit or the decision for refusal of the competent authority is subject to appeal before the respective administrative court by order of the Administrative Procedure Code. (Art.71 Water Act)

Seveso III laws

The Disaster Protection Act transposes Directive 2012/18/ EU of the European Parliament and of the Council of 4 July 2012 on the control of major-accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (Seveso III directive). The main regulation of the Seveso regimes is in the EPA and in the Ordinance for prevention of major accidents with hazardous substances and for restriction of consequences from them. Decisions for approval or disapproval of the safety report may be appealed under the Administrative Procedure Code within 14 days from their announcement.

Environmental Noise Protection Act

The law introduces the requirements of Directive 2002/49/ EC of the European Parliament and of the Council of 25 June 2002 on the assessment and management of environmental noise (OJ L 189/12 of 18 July 2002).

There is a distinction between the assessment, management and control of noise in residential and public buildings, which are carried out in accordance with the Health Act, as well as with the by-laws on its implementation, with the Noise Protection Act being subsidiary.

Upon ascertainment of a violation of the prohibition for emitting noise (e.g. of open areas in zones and territories, intended for residential construction, recreational zones and territories and zones with mixed purpose of road vehicles), the officials appointed by the Minister of the Interior issue a written order for suspension of the sound system. The order may be appealed pursuant to the Administrative Procedure Code, as the appeal does not suspend the execution. (Art.28a)

Waste Management Act

The issued permit and other decisions concerning the site for waste treatment may be appealed before the respective administrative court pursuant to the Administrative Procedure Code. The appeal does not suspend the execution of the appealed act. (Art.77)

Other laws that provide rules for access to justice aim at protecting the sustainable use of natural resources, in particular land-use regimes and changing the designation of agricultural land, forests and the Black Sea coast, exploitation of mineral resources, and the land-use designation in the General Spatial Plan: the Agricultural Land Conservation Act, the Forestry Act, the Black Sea Coast Spatial Development Act, the Underground Resources Act, the Territorial Development Act.

The reasoning of the Bulgarian courts when deciding on legal standing has also included reference to the case-law of the Court of Justice, in particular Case C-240/09. The court examined the grounds of a legal review of procedures involving the participation of the public concerned. In this case, a special legal standing, arising from the requirements of Art. 9, para. 2 of the Aarhus Convention in relation to the projects of Annex I to the Convention, for which approval the national law provides for public consultation, was recognised (e.g. Ruling 466/14.01.2014, administrative case № 15788/2013, 7 chamber of SAC[2]).

The court maintains that the legal standing, in the hypotheses of contesting acts directly reflecting on the environment, shows a deviation from the right to challenge referred to in Art. 147(1) APC content of the right to challenge. As an international treaty which, in view of the provision of Art. 5(4) of the Constitution, has primacy over national provisions that contradict it, and in view of the special EPA, the existence of legal standing of the association should be assessed in accordance with Art. 9, § 2 of the Convention. According to this provision, access

to justice is considered to be provided to non-governmental organisations that have sufficient interest or an infringed right; for the purposes of the Convention, the interest of any non-governmental organisation which meets the requirements of national law and works to protect the environment - Art. 9, §2 in conjunction with Art. 2, item 5 of the Convention, assuming that the organisation may also have an infringed right. The provisions of §1, item 25 and item 24 of the EPA are similar. Given this relevant legislation, as far as the legal standing of NGOs and the indisputably established registration of a private complainant in accordance with national law and the subject of "activity – environmental protection" are concerned, they can have legal standing, provided the other requirements of the Convention are also complied with[3].

For procedures that do not require public participation, the general requirement for legal standing within the meaning of national law is applied under the conditions of Art. 147 of the APC, i.e. for having legal standing as an owner of a (potentially) violated or infringed right.

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?

As a general principle applicable to procedures under the laws listed above, within the administrative review both the appropriateness and legality of the administrative act may be challenged. Judicial review is only for lawfulness in the case of procedural violations that are substantial and breach material law. According to Art. 146 of the APC, the grounds for legal review are:

1. lack of jurisdiction;
2. non-compliance with the established form;
3. significant violation of administrative production rules;
4. contradiction of substantive provisions;
5. non-compliance with the purpose of the law.

The court monitors ex officio the validity, admissibility and conformity of the administrative decision with substantive law.

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

The choice to challenge an administrative act for its legality and expediency first within an administrative review before a superior authority or directly with the court for its legality is at the discretion of the contesting party, but with the reservation that a mandatory phase of challenge before the higher administrative body might be introduced by law. Art. 148 of the APC stipulates that the administrative act can be challenged before the court without exhausting the possibility of challenging it by administrative procedure, unless otherwise provided by law, including in the Code itself. Such was the provision of Art. 216 of the Spatial Development Act (repealed SG, No. 25 of 2019), which did not allow direct challenge to the court of a building permit and the other acts of the chief architect referred to therein.

See also 1.7.3.

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 exercise of the right to participate, incl. for the public concerned, in the administrative process for issuing of an act is not among the statutory requirements for standing and challenging this act.

See also 1.8.1.8 and 2.1.1.

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

Procedural violations which do not necessarily affect the discretion of the decision-making authority as expressed in the contested act do not constitute grounds for annulment in the legal review. The court is not competent to rule on the discretion of the decision-making authority (expediency) for making a choice between more than one legally valid alternatives.

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

See the general principle of equality in the Administrative Procedure Code, which is explained in 1.8.1.9. in the context of EIA procedure.

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

The general principles of speed and procedural economy as essential for the administrative and judicial phases are reviewed in 1.8.1.10 within the context of EIA 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?

The general rules described in 1.7.2. apply.

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 about costs described in 1.7.3. apply.

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[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 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 administrative decisions that finalise the SEA procedure[5] are the screening statement (decision whether or not to carry out a full SEA) and the final full decision on the SEA procedure (Art.88(1) EPA). Access to the statement or decision is ensured for the public, the affected and interested parties and each state in the case of transboundary effects that will arise as a result of application of the plan or programme (PP) following the rules stipulated in the SEA Ordinance. The interested parties may appeal the statement or decision under the APC within 14 days from its announcement. Access to justice is possible at the stage of SEA procedure for assessment of PP. In spatial planning, where most of the PPs subject to SEA are adopted, there is no access to justice for ENGOs, only for directly affected individuals.The detailed plans cannot be challenged by the general public or ENGOs, only by owners, holders of limited property rights and concessionaires of the plot or of the neighbouring real estates regulated or directly affected by the Detailed Spatial Plan) (Art. 131 SDA). See also 2.4.3.

§ 1, pp. 24-25 of the Additional Provisions of the EPA defines the “public” and “public concerned” who can also be interested parties in administrative and legal appeals in SEA procedures. ENGOs that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings before a court. However, there is no established case-law on access to court for ENGOs with private interest as opposed to those with public interest. The interested parties may appeal the SEA screening or final decision under the APC within 14 days from its announcement. The decisions of the first-instance court on appeals against decisions regarding the realisation of sites designated as PP of national significance by an act of the Council of Ministers which are also PP of strategic importance are final. The court considers the complaints and rules with a decision within 6 months from their submission. The court announces its decision within 1 month of the session in which the case was heard and closed. Though one-instance legal review limits the access to justice, in the event that the court rules in favour of the complainant the timeliness and overall result of preventing implementation of PP with adverse environmental impacts is partially effective.

With access to justice to the screening and final SEA decisions, the system of legal review is comprehensive and efficient. However, the barriers to access to justice to the PP reduce its effectiveness, which could be improved with legislative changes, for which the Aarhus Convention Compliance Committee and the Meeting of the Parties

are also calling. See also 2.4.3 and 1.4.1.

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?

As a general principle applicable to procedures under the laws listed above, within the administrative review both the appropriateness and legality of the administrative act may be challenged. Judicial review is only for legality – procedural legality for violations that are substantial and substantive legality for breach of material law. See also 2.1.2.

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

No, there is not. An administrative act may be contested before the court even if the possibility for administrative contestation of the act has not been exhausted, unless otherwise provided for in the APC or in a special law. (Art. 148 APC). See also 1.3.2. and 1.8.1.7.

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 exercise of the right to participate, incl. for the public concerned, in the administrative process for issuing the act is not among the statutory requirements for recognising the procedural legitimation for challenging it.

See also 1.8.1.8 and 2.1.1.

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 rules described in 1.7.2. apply accordingly.

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 general rules about costs described in 1.7.3. apply accordingly.

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[6]

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

The general rule about the participation of citizens and organisations in administrative procedures is set out in Art. 27 of the APC. Upon submission of a request to initiate or join the proceeding, or upon receipt of the notification referred to in Article 26, the applicant and the individuals and organisations concerned who have joined the proceeding become parties to the proceeding for the issuance of an individual administrative act. The administrative authority must verify the prerequisites for admissibility of the request and for participation of the individuals or organisations concerned in the proceeding for the issuance of the individual administrative act. This principle can apply to any act of a general nature relevant for approval of PPs outside the scope of SEA. Once these persons are admitted as parties to the proceeding, the general rules for administrative and legal review apply. (Please see 2.1.2.).

In the current practice of the administrative courts, the decisions of the municipal councils on adopting programmes under Art. 27 of the Clean Ambient Air Act for improving air quality by decreasing pollution levels and achieving air quality value levels are not accepted as challengeable administrative acts due to the nature of the act as an “internal act” which does not affect the rights and interests of citizens and organisations. Based on this, the courts have concluded that the ambient air quality programme is not an act of a public authority that can be challenged by members of the public. A Bulgarian NGO, “Za Zemiata”, also filed a case with the Compliance Committee to the Aarhus Convention claiming violation of the Convention by denying legal standing to citizens and ENGOs to challenge Air Quality Plans.

See also 2.2.1.

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?

Most plans and programmes cannot be reviewed outside the SEA procedure by ENGOs and the general public. As mentioned in p. 2.2.1, general development plans are not subject to legal review (Art. 215 (6) SDA). Detailed spatial plans cannot be challenged by the general public or ENGOs, only by owners, holders of limited property rights and concessionaires of the plot or of the neighbouring real estates regulated or directly affected by the Detailed Spatial Plan (Art. 131 SDA). Also, as mentioned above, in the current case-law of the administrative courts the decisions of the municipal councils on adopting programmes under Art. 27 of the Clean Ambient Air Act for improving air quality by decreasing pollution levels and achieving air quality value levels are not accepted as challengeable administrative acts due to the nature of the act as an “internal act” which does not affect the rights and interests of citizens and organisations. The same would apply to other PPs which do not affect the rights and interests of citizens and ENGOs and are not general or individual administrative acts[7] in the definitions of the APC.

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

No. The principal rule of the APC is that an administrative act may be contested before the court even if the possibility for administrative contestation of the act has not been exhausted, unless otherwise provided for in the APC or in a special law. (Art. 148 APC). See also 1.3.2., 1.8.1.7. and 2.3.2.

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 exercise of the right to participate, incl. for the public concerned, in the administrative process for issuing the act is not among the statutory requirements for recognising the procedural legitimation for challenging it.

See also 1.8.1.8 and 2.1.1. and 2.3.2

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 rules described in 1.7.2. apply.

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 general rules about costs described in 1.7.3. apply.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[8]

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?

There is a growing tendency in the sectoral legislation for positive examples in this group of cases and ongoing gradual establishment of the criteria for access to justice, including with regard to the procedures, i.e. not only in administrative but also civil proceedings. In the case-law, the uncertainties are primarily related to the legal characteristics of the act and the legal interest. A significant contribution to the development of the legislative process has been the most recent Decision № 14/2020 of the Constitutional Court, according to which the non-appealability of administrative acts cannot affect the realisation of the fundamental rights and freedoms of the citizen, unless this is necessary for the protection of higher constitutional values related to particularly important interests of the citizens. The decision in essence denies the unlimited possibility of the law-makers, by expedience, to exclude from judicial control a certain category of acts, in this case general development plans, and declares Art. 215(6) of the Territorial Development Act unconstitutional.

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)?

According to Art. 120 of the Constitution, a system of a general legal review for legality has been adopted, which also covers normative administrative acts. The contestation before the Constitutional Court of a law adopted by the National Assembly due to its incompatibility with the Constitution or an international legal act to which the Republic of Bulgaria is a party is limited to the exhaustively determined subjects[9] and an individual constitutional complaint is not admissible.

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?

General development plans are not subject to legal review (Art. 215 (6) SDA). The detailed plans cannot be challenged by the general public or ENGOs, only by owners, holders of limited property rights and concessionaires of the plot or of the neighbouring real estates regulated or directly affected by the Detailed Spatial Plan (Art. 131 SDA). The Compliance Committee to the Aarhus Convention found that by barring all members of the public, including environmental organisations, from access to justice with respect to General Spatial Plans Bulgaria fails to comply with Art.9(3) of the Convention; and by barring almost all members of the public, including all environmental organisations, from access to justice with respect to Detailed Spatial Plans Bulgaria fails to comply with Art.9(3) of the Convention[10].

In the Water Act, interested persons who have participated in the procedure for issuing a water-use permit can also challenge the decision or the refusal for a permit within the general procedure.

The grounds for administrative and legal review in cases where individuals or ENGOs are admitted to the procedure are the same as discussed in 2.1.2.

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

There is no such a requirement as a general principle, but according to Art. 148 APC it is possible to introduce such a rule by means of a law. See also 2.1.3.

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.?

There is no such a condition for legal standing. See also 2.1.4.

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

Procedural infringements which are not of such a nature as to affect the decision of the decision-making authority expressed in the contested act are not grounds for annulment by judicial review. The court also has no jurisdiction to rule on the discretion given to the decision-making authority (expediency) for the choice made from more than one lawful alternative.

Null and void acts may be challenged without a time limit, but nullity may not be brought after a challenge of the

lawfulness of the act has been rejected.

See also 2.1.5.

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

Please refer to 1.8.9. and 2.1.6.

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

The general principles of speed and procedural economy as essential for the administrative and judicial phases are reviewed in 1.8.10 within the context of EIA procedure. See also 2.1.7.

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

The general rules described in 1.7.2. and 2.1.8 apply.

The proceedings for damages under Chapter 11 of the APC cover claims for damages caused to citizens or legal entities by illegal acts, actions or omissions of administrative bodies and officials. Amended SG, no. 94 of 2019, adds claims for damages caused by a sufficiently significant violation of European Union law, and the standards of non-contractual liability of the state for violation of European Union law are applied to property liability and admissibility of the claim.

In a recent court case, a collective action was admitted by the Sofia City Court, including, at the request of the appellants, the court ordering, as an interim measure, that the municipality announce the average daily levels of fine dust particles on its website, on information boards located in public transport vehicles and in metro stations. It also obliged Sofia Municipality to carry out in its territory the activity of machine-washing of streets of public importance and inner-neighbourhood streets twice a month, and to present in the case a plan for construction of cycle lanes, including from the suburbs to the central part of the city.

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 provision of Art. 60 of the Constitution requires that citizens must pay taxes and duties established by law proportionately to their income and property. An amendment to the Environmental Protection Act which introduced a proportional fee for cassation appeal of decisions for environmental impact assessment (EIA) was pronounced as unconstitutional, Constitutional Court case No.12/2018.

The fee for affected parties to submit a claim for damages caused by illegal administrative acts is defined as a simple flat fee, i.e. not in accordance with the material interest (value for the party) in the case.

The general rules about costs related to access to justice described in 1.7.3. apply. See also 2.1.9.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[11]

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?

If an act is adopted in the form of a law (normative instrument), the only possibility for direct judicial review of this act is before Constitutional Court, and only specific subjects (one fifth of the Members of the Parliament, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court and the Prosecutor General) are entitled to initiate this review (Art. 150(1) of the Constitution). The Constitutional Court has

jurisdiction, among other things, to: provide binding interpretations of the Constitution; to pronounce on any petition to establish unconstitutionality of laws and other acts passed by the National Assembly, as well as acts issued by the President; to settle any competence disputes between the National Assembly, the President and the Council of Ministers, as well as between the bodies of local self-government and the central executive authorities; to pronounce on the consistency of any international treaties concluded by the Republic of Bulgaria with the Constitution prior to ratification of such treaties, as well as on the consistency of any domestic laws with the universally recognised standards of international law and with the international treaties to which Bulgaria is a party. (Art. 149(1) of the Constitution)

According to Art. 150 (3) of the Bulgarian Constitution, the Ombudsperson may approach the Constitutional Court with a petition for declaring as unconstitutional a law which infringes human rights and freedoms. The Ombudsperson can notify the authorities, as listed under Article 150(1) of the Constitution, to approach the Constitutional Court if he/she is of the opinion that it is necessary to interpret the Constitution or to pronounce on compliance with the Constitution of the international treaties entered into by the Republic of Bulgaria prior to their ratification, and on the compliance of laws with the generally recognised rules of international law and with the international treaties to which the Republic of Bulgaria is a party. (See also 1.3.7)

The normative acts (by-laws) issued by the executive authorities can be challenged (Art. 185-196 of the APC). They may be challenged in full or in relation to individual provisions. Citizens, organisations and bodies whose rights, freedoms or legal interests are affected, or may be affected, by a by-law normative act, or for whom such act gives rise to obligations, have the right to challenge the act. The prosecutor may file a protest against the act.

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

There is no administrative review of laws in the Bulgarian national legal system. However, the Regional Governors supervise the normative instruments of municipalities (municipal by-laws).

The acts of the municipal council that could be normative instruments used to implement EU environmental legislation and related EU regulatory acts may be challenged before the respective administrative court.

The regional governor exercises control over the legality of the acts of the municipal councils, unless otherwise provided by law. They may return illegal acts to the municipal council for new discussion or challenge them before the relevant administrative court.

The mayor of the municipality may return illegal or inappropriate acts of the municipal council for new discussion or challenge the illegal acts before the respective administrative court and request suspension of the implementation of the general administrative acts and the effect of the by-laws. The act returned for new discussion shall not enter into force and shall be considered by the municipal council within 14 days from its receipt.

The amended or re-adopted act of the municipal council may be challenged before the respective administrative court pursuant to the APC. The general rules for administrative procedure, as established by law, apply to unsettled issues on the issuance, contestation and implementation of the acts of the municipal councils and the mayors. (Art. 45 of the Local Self-government and Local Administration Act).

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 administrative or legal review of laws by the general public and ENGOs. However, they can challenge normative by-laws in full or in relation to individual provisions. There is a right of challenge for citizens, organisations (incl. ENGOs) and authorities whose rights, freedoms or legal interests are affected, or may be affected, by a normative by-law act, or for whom such act gives rise to obligations (185-186 APC).

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

There is no such a condition for legal standing. See also 2.1.4. Citizens and NGOs can file direct legal appeals against the by-laws (e.g. regulations and ordinances of central authorities).

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?

If the Supreme Court of Cassation or the Supreme Administrative Court establishes inconsistency between a law and the Constitution, it shall suspend proceedings in the case and refer the matter to the Constitutional Court (Art. 150(2) Constitution of the Republic of Bulgaria). With the provision of art. 151, para. 2, third sentence, of the Constitution, the constitutional legislator has adopted as a rule that the decision of the Constitutional Court (CC) declaring a law unconstitutional as a normative act is valid from now on (ex nunc). The legal effect of the decision is non-application of the declared unconstitutional law from the day of entry into force of the decision of the CC. From that moment on, it ceases to operate and regulate public relations subject to its regulation. Decisions of the CC shall be promulgated in the State Gazette within 15 days from their adoption and shall enter into force 3 days after their promulgation. (Art.14(3) Constitutional Court Act). In a recent decision[12], the CC declared that in some cases its decisions may have retroactive effect when they declare as unconstitutional non-normative laws, decisions of the National Assembly and decrees of the President.

The appeal of acts of the municipal councils by the regional governor suspends the implementation of the individual and general administrative acts and the effect of the by-laws, unless the court rules otherwise. (Art. 45(4) of the Local Self-government and Local Administration 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 general rules about costs related to access to justice described in 1.7.3. apply. See also 2.1.9.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[13]?

When the interpretation of a provision of European Union law or the interpretation and validity of an act of the bodies of the European Union is relevant for proper resolution of the case, the Bulgarian court shall make a preliminary reference (inquiry) to the Court of Justice of the EU. The inquiry shall be addressed by the court before which the case is pending, ex officio or at the request of the party. The competent court, whose decision is subject to appeal, may not accept the request of the party to send a preliminary request for interpretation of a provision or of an act. The ruling is not subject to appeal. The court whose decision is not subject to appeal shall always ask for an interpretation, except where the answer to the question follows clearly and unambiguously from a previous ruling of the Court of Justice or the meaning and significance of the provision or act are so clear that they do not give rise to doubt. The competent court shall always make an inquiry when a question is raised about the validity of an act under art. 628. (Art. 628-629 of the Civil Procedure Code)

There is no specific procedure according to national law for directly challenging an act adopted by the EU institution or body before the national 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]Legal standing is granted for challenging in part the administrative act referring to the need for carrying out of appropriate assessment for impacts on protected areas by the NGO as public concerned. In this court ruling, the court recognises the standing with reference to Annex I, p. 20 of the Aarhus Convention. The case is an example of the challenging of art.6(3) of the Habitats Directive screening decision.

[3] Article 6 of the Convention states that each party shall apply the provisions of this Article: (a) to decisions authorising proposed activities referred to in Annex I; (b) in accordance with their national law in respect of decisions which are not included in Annex I but which may have a significant effect on the environment, the Parties determining whether the proposed activity is subject to these provisions.

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

Aarhus Convention.

[5] The SEA is mandatory for plans and programmes in the fields of agriculture, forestry, fisheries, transport, power generation, waste management, water resources management and industry, including production of underground resources, electronic communications, tourism, development planning and land use, when these plans and programmes outline the framework for the future development of investment proposals of appendices No 1 and 2. Plans and programmes at local level for small territories, and changes of such plans and programmes, are assessed only when, at their application, significant impacts on the environment are expected. All other plans and programmes are submitted to a screening procedure according to the SEA Ordinance. (Art. 85 EPA)

[6] 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.

[7] General administrative acts are administrative acts with one-time legal effect which create rights or obligations or directly affect the rights, freedoms or legal interests of an indefinite number of persons, as well as refusals to issue such acts. (Art. 65 APC)

[8] 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.

[9] The Constitutional Court would act in this case on an initiative from no fewer than one fifth of all Members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Prosecutor General.

[10]ACCC/C/2011/58 Bulgaria. The Meeting of the Parties confirmed these findings with Decision V/9d on compliance by Bulgaria with its obligations under the Convention.

[11] Such acts fall 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

[12] Case No.3/2020 of the Constitutional Court.

[13] I 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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