# Access to justice in environmental matters

Luxemburg

To find more national information about access to justice in environmental matters, please click on one of the links below:

1. Access to justice at Member State level
2. Access to justice falling outside of the scope of EIA (Environmental Impact Assessment), IPPC/IED (Integrated Pollution Prevention and Control (IPPC) Industrial Emissions Directive), access to information and ELD (Environmental Liability Directive)
3. Other relevant rules on appeals, remedies and access to justice in environmental matters

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## Access to justice at Member State level

### 1.1. Legal order – sources of environmental law

**1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order**

In Luxembourg, the environment is protected by the constitution, national laws, European and international law. Access to justice is limited to individuals and organisations who have standing. Only individuals who have a direct, certain, actual, effective and legitimate interest may challenge a decision. Although there are no court fees in Luxembourg, the high level of lawyers' fees may deter individuals to bring actions before courts.

The Ministry of the Environment, Climate and Sustainable Development is the main public body in charge of the protection of the environment. It works with 3 administrations to carry out its mission: the administration of the environment, the administration of nature and forests and the administration of water management.

The High Council for the protection of nature and natural resources (Conseil supérieur pour la protection de la nature et des ressources naturelles) provides advice on all projects affecting nature to the Minister. In addition, the Inspection of work and mines (Inspection du travail et des mines) is competent to set out authorization conditions for dangerous industrial establishments and to control the application of existing laws.

**2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights**

In 1999, the Luxembourg government amended the Constitution and added the protection of the environment and animals as a new constitutional principal (Article 11 b). It includes the protection of the human environment which is covered by the Ministry of the Environment, Climate and Sustainable Development.

**3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts**

Environmental laws, regulations, international conventions and case law are codified in the code of the environment. The most important environmental laws are the Law on classified installation of 10 June 1999, the Law of 19 December 2008 on water, the Law of 19 January 2004 on the protection of nature and natural resources, the Law relating to environmental liability of 20 April 2009 and the law relating to waste management of 21 March 2012.

The Law related to public access to environmental information of 21 November 2005 provides rules to access to justice in environmental matters. No specific sectoral legislation contains the provisions on access to justice.

**4) Examples of national case-law, role of the Supreme Court in environmental cases**

Since the 2010 case *Greenpeace asbl Esch sur Alzette*, ENGOs of national importance may take action before administrative courts to challenge individual administrative decision and not only regulatory decisions. The status of national importance for associations restricts access to justice to a small number of national ENGOs.

The supreme case is competent to rule on environmental cases only if the case is related to civil and criminal environmental law. It does not rule on any case related to administrative environmental law.

**5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?**

Parties can rely on international environmental agreements when ratified by national and EU authorities.

### 1.2. Jurisdiction of the courts

**1) Number of levels in the court system**

In Luxembourg, there are two orders of jurisdiction: the civil order and the administrative order.

In the **civil order**, there are three level of courts: the "tribunal d'arrondissement" (High Court of Justice), the Court of Appeal and the Supreme Court (Cour de Cassation). The cases in cancellation of the judgments delivered by the various chambers of the Court of Appeal are mainly carried before the Supreme Court to be appealed.

In the **administrative order**, the first level is the Administrative Tribunal. The Administrative Court constitutes the supreme jurisdiction of the administrative order.

**2) Rules of competence and jurisdiction – how is it determined if there is jurisdiction of the court, cases of conflict between different national tribunals (in different Member States)?**

There are two legal district tribunals (Luxembourg and Diekirch). The judges of the courts are directly appointed by the Grand Duke. There are also three small claims courts (juge de paix), (Diekirch, Luxembourg and Esch-sur-Alzette) Territorial competence of judicial tribunals is determined by the residence of the defendant. The cases heard by these courts are criminal and civil law cases which can include environmental cases with the exception of administrative matters in environmental law.

All decisions of first instance ruled by the district tribunals ("tribunal d'arrondissement") of Luxembourg and Diekirch can be appealed before the Court of Appeal. To appeal a judgment, the appellant must bring his appeal within 40 days of the notification of the decision before the clerk of the court. The court of appeal will examine the application of the law to the facts by the district tribunal and will confirm or overrule the judgment of the tribunal.
Judgments of small claim courts can be appealed before district tribunals.
Decisions of the court of appeal and decisions of other tribunals ruled in last instance can be challenged before the "cour de cassation". The "cour de cassation" will only examine the application of the law and the rules of procedure. The time limit to bring an action before the "cour de cassation" is two months from the notification of the judgment.
There is only one administrative tribunal in Luxembourg.

**3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges**

In Luxembourg, there are no specific courts or tribunals to decide on environmental matters. Environmental cases are judged by administrative or judiciary tribunal depending on the matter.

**4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion**

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## 1.3. Organisation of justice at administrative and judicial level

**1) System of the administrative procedure (ministries and/or specific state authorities)**

The Ministry of the Environment, Climate and Sustainable Development is competent to implement the environmental policy of the government. It coordinates national plans including the national plan for sustainable development. It provides authorization to classified installations. The Ministry is divided into three departments: the Administration of the Environment, the Administration of Nature and Forests and the Administration of water management.

**2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?**

An appeal can be brought before the administrative tribunal within three months of the notification of the administrative decision. A lawyer will bring the appeal. The administrative procedure is written and is organized around strict time limits. The examination of the file by the Tribunal takes 7 months before ruling the case.

**3) Existence of special environmental courts, main role, competence**

There are no special environmental courts in Luxembourg.

**4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)**

The Administrative Court has cassation and reformatory rights. The administrative judge can rule on the legality as well as the proportionality of the administrative decision. He can substitute his decision for the decision of the administration. The time limit to appeal court orders and decisions before the administrative court of appeal is 40 days from the notification to the parties. An appeal is brought by an appeal claim through a lawyer. The rules are provided by the Law of 21 June 1999 on the procedure before administrative jurisdiction.

**5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references.**

There are no extraordinary ways of appeal in Luxembourg apart from interim emergency procedures.
Preliminary rulings can be requested from the EU Court or from a higher domestic jurisdiction by the Luxembourg judge according to article 267 TFEU When the judge orders a preliminary ruling, he needs to order a stay of the proceedings.

**6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?**

Mediation as a form of alternative dispute resolution is usually used in Luxembourg in commercial and family litigation. It is not very common in conflict related to environmental areas.

**7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?**

As the Mediator of the Grand-Duchy of Luxembourg, the Ombudsman manages complaints related to the functioning of the state and municipal administrations and others related to public institutions.

## 1.4. How can one bring a case to court?

**1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?**

Standing rules are consistent before all courts. However, Article 63 of the Law on the protection of nature and natural resources has set specific rules for environmental association. In Luxembourg, courts assess litigants' standing. Standing rules are applicable throughout the environmental procedure from administrative appeal to judicial review. The requirements for standing do not change according to the type of remedy sought. Pursuant to a new bill of law on nature and natural resources protection, the Council of State has confirmed that case law allowing ENGOs to bring judicial review against individual administrative decisions did not need to be included in the new bill as judges must be able to use their discretionary power.
Courts consider standing before giving an opinion on the merits. It is up to the judge's discretionary power. If the judge does not recognize parties to have standing, he will not consider the merit of the case.
Standing criteria for environmental cases that concern union law are the same as for environmental cases that do not. Union law has influenced the concept of standing in national law.
The concept of "concerned public" does not exist in national law. However, the Ministry of Sustainable Development and Infrastructure has argued that it could be used as an opposable norm by a mere application of the Aarhus Convention.

**2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?**

As a result of the transposition of EIA Directive (2011/92/EU) and IED Directive (2010/75/EU) into national legislation, associations of national importance are considered to have "sufficient interest". These associations are recognized by the competent Ministry according to their object.

**3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)**

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts as well as administrative review before the competent authority. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. He must also demonstrate that he has suffered or will suffer damage from the decision. The situation must also exist at the moment of the decision.
ENGOs have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOs have legal standing if the State of Luxembourg authorises them, but national ENGOs are favoured as it is easier for them to receive official approval. In theory, local ENGOs could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOs have been recognized as having national importance by the competent Ministry. Foreign ENGOs need to have Luxembourg "residence" in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOs.

**4) What are the rules for translation and interpretation if foreign parties are involved?**

Luxembourg respects article 6 of the European Convention on Human rights. Individuals are allowed to have a translator during trials.

### 1.5. Evidence and experts in the procedures

*Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure*

**1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?**

In administrative law, the proof burden is shared between the Administration and the person initiating the legal action. The judge holds an inquisitorial power that allows him to request the administration to provide him with files and relevant documents. If the Administration opposes the secrecy of the files (industrial or commercial), the judge has discretionary power.

**2) Can one introduce new evidence?**

Any evidence can be introduced. But the judge always holds discretionary power to accept or reject the evidence produced.

**3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts**

To get expert opinions in procedures, one needs to bring an emergency expertise procedure to ask the judge to appoint an expert. Once the expert is appointed, he will convene the parties to the procedure to a meeting. He will write an expert report which will be used in the rest of the legal procedure.
A list of experts is available on the justice ministry website.
In order to get an expert opinion in the procedures, a motion must be filed to the Tribunal to ask for the appointment of a judiciary expert in the right field.

**3.1) Is the expert opinion binding on judges, is there a level of discretion?**

Expert opinion is not binding on judges. They have a certain level of discretion. The court can reject the expert opinion if it thinks that the expert has made an error.

**3.2) Rules for experts being called upon by the court**

In order to obtain technical information, the court can call upon an expert. The parties are convened to a meeting by the expert. He will write a report on which the parties can add comments. They need to interact with the parties with respect to the adversarial principle. They need to be independent.

**3.3) Rules for experts called upon by the parties**

The parties can request the court to call upon an expert to obtain technical information. The judge will choose an expert from the list of experts appointed who will prepare a report answering the technical questions written on the court decision. Once the report is produced, the Parties will use it to ask the court to take a position on the main litigation aspect of the case. If the parties have reason to believe that the expert is not impartial, they can ask the judge to reject this expert.

**3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?**

There are no procedural fees. Expert fees will be paid by the person requesting the expert opinion.

### 1.6. Legal professions and possible actors, participants to the procedures

**1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field.**

It is compulsory to be assisted by a lawyer before all the administrative jurisdictions and the judiciary tribunal “Tribunal d’arrondissement” in civil matters as well before the Court of appeal and the Supreme Court.
The bar of Luxembourg has established a registry of all the lawyers registered. A search by legal field is available.
It is only compulsory to be represented by a lawyer before administrative courts and the “Tribunal d’arrondissement” (civil court).

**1.1 Existence or not of pro bono assistance**

In Luxembourg, legal aid is available to people having financial difficulties. Some law firms offer pro bono assistance, but it depends on the size and legal interest of the cases.

**1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it (perhaps links to forms, court or agency in charge, address, telephone, email, ways to contact, etc.)?**

People have to fill in a request to the Bar of Luxembourg or to the Central Social Assistance Services. Both claimant and defendants may apply for legal in civil, administrative, commercial legal cases and therefore in environmental cases. Although there are no specific rules applying to environmental cases, legal aid will be available to people corresponding to the general attribution criterion. Due to the small number of lawyers practicing in the area of environmental public interest litigation, there is no pro bono legal assistance available to individuals or ENGOs. In addition, there are no law school clinics that focus on representing the public in environmental cases.

**2) Expert registries or publicly available websites of bars or registries that include the contact details of experts**

People can choose experts from the list provided on the website of the Justice Ministry.

**3) List of NGOs who are active in the field, links to sites where these NGOs are accessible**

Natur & emwelt asbl foundation
Fédération des Unions d’Apiculteurs du Luxembourg
Bio-Nest asbl
Centre de soin de la faune sauvage
Verenegug fir biologesche landbau Lëtzebuerg
Mouvement Ecologique Section Mëllerdall-Echternach
Coin de terre et du Foyer - Société pour la Protection des Animaux Differdange: animaux@pt.lu
Mouvement écologique
Association luxembourgeoise de droit de l’environnement

**4) List of international NGOs, who are active in the Member State**

Greenpeace.

### 1.7. Guarantees for effective procedures

#### 1.7.1. Procedural time limits

**1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).**

The time limit to challenge an administrative environmental decision (administrative review) is usually 3 months i.e. before the expiration of the time limit to bring a claim before the Administrative Tribunal. However, there is no specific time frame to challenge an administrative environmental decision before the competent administrative authority.

**2) Time limit to deliver decision by an administrative organ**

Administrative authorities are asked to deliver a decision within 3 months of the request sent by an applicant. If the administration does not provide a decision within 3 months, its silence equals a negative decision.

**3) Is it possible to challenge the first level administrative decision directly before court.**

Before bringing a case before the administrative tribunal, individuals do not need to have exhausted all “organized administrative recourses”.

**4) Is there a deadline set for the national court to deliver its judgment?**

Instruction of the case by the court is limited to 7 months. The Administrative Tribunal must rule within this deadline. The administrative court of appeal must take its decision within a timeframe of 5 months from the judgment of the Administrative Tribunal.

**5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)**

The motion must be submitted to the Tribunal within one month of the submission of the claim. The defendant has to submit his statement of defence within 1 month. The claimant can respond once within 1 month and so on. The tribunal decides on the pleading date within the month of the submission of the last statement. Judgment is delivered by the Administrative Tribunal within one month of the pleading hearings.

**1.7.2. Interim and precautionary measures, enforcement of judgments**

**1) When does the appeal challenging an administrative decision have suspensive effect?**

In administrative law, the appeal or the action submitted to an administrative court against an administrative decision does not have a suspensive effect. The administrative decision is considered to be legal and enforceable even if its legality is challenged.

**2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?**

In environmental matters, action against an administrative decision may have a suspensive effect if it is based on serious grounds and the execution of the decision may cause serious and irreparable damages. The administrative decision of the court can either be positive or negative. The claimant can request the execution of the judgment once it has been ruled. He can ask a "special commissioner" ("commissaire spécial") to execute the decision through an extraordinary procedure.

**3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?**

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is oral. Parties do not need to be represented by a lawyer. The judge’s decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits.

**4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?**

There is an immediate execution of an administrative decision irrespective of the appeal introduced.

**5) Is the administrative decision suspended once challenged before court at the judicial phase?**

The administrative decision is not suspended once challenged before the court.

**6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?**

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The court decision can be appealed within 15 days of the notification of the decision. The court of appeal is competent to rule on the case. An emergency procedure will be following as in first instance. No financial deposit is needed.

**1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms**

**1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.**

Claimants will face bailiff fees, expert fees and lawyers’ fees. Bailiff fees are determined by a flat fee and governed by Grand-Ducal regulation. Bailiff costs and lawyers’ fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursements other than the statutory fees.

**2) Cost of injunctive relief/interim measure, is a deposit necessary?**

The cost of injunctive relief/an interim measure may vary according to the complexity and the value of the case. Although the injunctive relief procedure should be straightforward and inexpensive, lawyers may charge higher fees for this work than for other simple procedures. There are no specific procedural fees to be paid apart from lawyers’ fees.

**3) Is there legal aid available for natural persons?**

Legal aid is available for people who have financial difficulties. They have to fill in a request to the Bar of Luxembourg or to the Central Social Assistance Services. This financial assistance covers all fees linked to the legal procedure and the lawyer, notary, bailiff and translator's fees. Legal aid is available for civil, commercial and administrative legal cases for both plaintiffs and defendants. It is available in litigation and in extra judicial recourses. Legal aid may also be granted in the case of precautionary measures and procedures to enforce court decisions or any other authority to execute.

**4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?**

There is no specific legal aid available to associations, legal persons or NGOs. However, regular legal aid rules for natural persons apply to environmental cases that are to be brought before either a civil or an administrative court. Legal aid is only available to individuals of insufficient means.

There is pro bono legal assistance provided by certain big law firms in Luxembourg. In addition, the legal information service provides free legal information but is not specialized in environmental law.

**5) Are there other financial mechanisms available to provide financial assistance?**

Legal protection insurance provides financial assistance. Insurance will either pay lawyers’ fees directly or will reimburse the client. They allocate a specific amount that can be paid per year or by specific case.

**6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?**

The Bar of Luxembourg prohibits contingency fees (pacte de *quota litis*) for the entire lawyers’ fee. There is no general rule according to which the losing party will have to bear the prevailing party's lawyer's fees.

**7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?**

In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party.

**1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC**

**1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?**

Public access to administrative judgments is provided to the public via a website.

Information on access to justice in environmental matters is accessible through the government sites:

Environment portal

Ministry of the Environment, Climate and Sustainable Development

**2) During different environmental procedures how is this information provided? From whom should the applicant request information?**

Information on access to justice in environmental matters is provided to the public via several websites. However, the information is neither very structured nor very clear.

Public access to administrative judgments is provided to the public via a website.

Information on access to justice in environmental matters is accessible through the government sites.

**3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?**

In Luxembourg, there are no specific sectoral rules. Regular administrative procedure applies to administrative environmental cases.

**4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?**

Each administrative decision must state the available remedies for access to justice and the time limit.

**5) Is translation, interpretation provided to foreign participants? What are the rules applicable?**

In Luxembourg, there are three administrative languages: French, German and Luxembourgish. All procedural documents must be written in French, but the hearing may be carried out in these three languages.

Translation can be provided to parties in court and will be paid for by the government. However, if a party wants to produce a witness who needs a translator, the party will have to pay for the witness as well as for the translator.

## 1.8. Special procedural rules

### 1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

*Country-specific EIA rules related to access to justice*

**1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)**

There are no rules on EIA screening decisions in Luxembourg.

**2) Rules on standing relating to scoping (conditions, timeframe, public concerned)**

The applicant (ENGO, natural person) can bring a case before the Administrative Tribunal. The claim must include the name and address of the claimant, the designation of the administrative decision, a summary of the facts and objections and the object of the claim.

**3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?**

Legal action before the Administrative Tribunal against the final administrative decision can be brought within a time limit of 40 days of the notification of administrative decision. The scoping can be brought before the Administrative Tribunal.

**4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?**

The Administrative Courts can review final EIA decisions or authorizations. The applicant, ministers, communes, neighbours of the establishment who have a sufficient and direct interest and associations of national importance can bring a case before the Administrative Tribunal. The Claim must include the name and address of the claimant, the designation of the administrative decision, a summary of the facts and objections and the object of the claim. It must also include the list of the exhibits that the claimant will use in the trial. The Administrative court will review the legality of the administrative decision and its validity.

**5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?**

Administrative courts review the procedural and the substantive legality of EIA decision. As they judge on the merits of the case, they will review the technical documents and the material evidence submitted. They can order an expert report and a visit the site.

**6) At what stage are decisions, acts or omissions challengeable?**

Legal action before the Administrative Tribunal against the final administrative decision which has a legal base can be brought within a time limit of 40 days of the notification of administrative decision.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

**8) 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., not meaning the requirement determined under point 12?**

In order to have standing before national courts it is not necessary to participate in the public consultation phase of the EIA procedure, to make comments, or to participate at a hearing. The regular rules on standing before national courts apply to people who want to challenge a decision related to EIA.

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

There is no such notion as equality of arms in Luxembourg.

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

There are no specific requirement in law that environmental procedure should be timely.

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

Injunctive relief is available in EIA procedures in the cases where there is a risk of serious damage. There are no special rules applicable to EIA procedures besides the regular national provisions.

### 1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

**1) Country-specific IPPC/IED rules related to access to justice**

In Luxembourg, there are no country-specific procedural rules in environmental matters. Regular administrative procedure applies.

**2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?**

Administrative Courts can review final IPPC decisions or authorizations. The final decision needs to have a legal base to be subject to claim. The applicant, ministers, communes, neighbours of the establishment who have a sufficient and direct interest and associations of national importance can bring a case before the administrative Tribunal. The claim must include the name and address of the claimant, the designation of the administrative decision, a summary of the facts and objections and the object of the claim. It must also include the list of the exhibits that the claimant will use in the trial. The Administrative court will review the legality of the administrative decision and its validity. The regular rules of administrative procedure apply as described above.

**3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)**

There are no rules on EIA screening decisions in Luxembourg.

**4) Rules on standing relating to scoping (conditions, timeframe, public concerned)**

The applicant, ministers, communes, neighbours of the establishment who have a sufficient and direct interest and associations of national importance can bring a case before the administrative Tribunal against the final administrative decision.

**5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?**

Administrative decisions of Administrative bodies can be appealed to the same administration (administrative review) or to the Administrative Tribunal. The decision needs to have a legal base to be subject to claim. It does not really matter at what stage as long as it has a legal base. If provided by law, the administrative decision can also be appealed to the Grand Duke of Luxembourg. There is no specific deadline but it is advised to appeal the decision within 3 months of its notification or publication.

**6) Can the public challenge the final authorisation?**

In Luxembourg, to appeal the final decision, people must have standing or a sufficient and direct interest.

**7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?**

The administrative tribunal judges the procedural and the substantive legality of IPPC decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

**8) At what stage are these challengeable?**

Decisions are challengeable once they have been notified or published.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

**10) 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., not meaning the requirement determined under point 12?**

In order to have standing before national courts, it is not necessary to participate in the public consultation phase of the IPPC procedure, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision related to IPPC.

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

There is no such notion as equality of arms in Luxembourg.

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

There are no specific requirement in law that environmental procedure should be timely.

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

Injunctive relief is available in IPPC procedures in cases where there is a risk of serious damage. There are no special rules applicable to IPPC procedures besides the regular national provision.

**14) Is information on access to justice provided to the public in a structured and accessible manner?**

Information on access to justice in environmental matters is provided to the public via several websites. However, the information is neither very structured nor very clear.

Public access to administrative judgments is provided to the public via a website.

Information on access to justice in environmental matters is accessible through the government sites.

**1.8.3. Environmental liability[1]**

*Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13*

**1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?**

Natural or legal person affected or likely to be affected by environmental damage or having a sufficient interest in environmental decision-making relating to the damage or, alternatively, alleging the impairment of a right can submit any observation relating to instances of environmental damage or an imminent threat of such damage of which they are aware to the Minister or the competent administration and are entitled to ask the Minister to take action under the law of 20 April 2009 relating to environmental liability (which constitutes the administrative review by the competent authority). The person directly affected can also bring an action before the court instead. They do not have to exhaust administrative review before bringing a case to court.

Rules on the standing of NGOs are the same as the ones already described.

**2) In what deadline does one need to introduce appeals?**

Legal action before the Administrative Tribunal against the decision can be brought within a time limit of 40 days.

**3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?**

There are no requirements for observations accompanying the request for action pursuant to Article 12(2) ELD.

**4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?**

There are no specific requirements regarding 'plausibility' for showing that environmental damage occurred.

**5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?**

The notification of the decision to the natural or legal person does not need to respect any particular form. The authority is only required to sign the decision and to be able to prove the reception date.

**6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?**

Annex II of the law of 20 April 2009 provides a guideline for reparation of environmental damages. Article 7 (3) of the Law states that the "Minister forces the operator to take repair measures" but if the operator does not take the appropriate measures, the Minister can take measures himself or ask third parties to take the necessary measures.

The competent authority, i.e. the Minister, has the power but not the duty to carry out preventive remedial measures if the operator has not been identified.

**7) Which are the competent authorities designated by the MS?**

The Minister: Member of the government who is in charge of protection of the environment.

The competent administration who is in charge of protection of the environment.

**8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?**

The MS does not require that the administrative review procedure be exhausted prior to recourse to judicial proceedings.

**1.8.4. Cross-border rules of procedures in environmental cases**

**1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?**

In EIA and IPPC procedures in which the establishment may have an impact on the environment of another country, the request file will be transmitted to the country that will be able to provide its comments. It will then be informed of the final decision. The final decision can be challenge before the competent authority.

**2) Notion of public concerned?**
The public concerned in a transboundary context includes individuals that have a direct and sufficient interest whether they are a Luxembourg resident or not. The notion of interest as described above remains the main condition to have standing.
**3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?**
NGOs who have not received an agreement from the Luxembourg state do not have standing. As result of the transposition of EIA Directive (2011/92/EU) and IED Directive (2010/75/EU) into national legislation, associations of national importance are considered to have a "sufficient interest".
**4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?**
Individuals of the affected country that have a direct interest have standing and can bring an action before a Luxembourg court. They are eligible for legal aid on the same conditions as Luxembourg residents. They can bring an action and request injunctive relief or interim measures under the same conditions as Luxembourg residents.
**5) At what stage is the information provided to the public concerned (including the above parties)?**
The information will be provided to the concerned public through its publication.
**6) What are the timeframes for public involvement including access to justice?**
Administrative organs are asked to deliver a decision within 3 months of the request sent by the applicant.
**7) How is information on access to justice provided to the parties?**
Information on access to justice in environmental matters is provided to the public via several websites. However, the information is neither very structured nor very clear.
Public access to administrative judgments is provided to the public via this website.
Information on access to justice in environmental matters is accessible through the government sites:
Environment portal
Ministry of the Environment, Climate and Sustainable Development
**8) Is translation, interpretation provided to foreign participants? What are the rules applicable?**
In Luxembourg, there are three administrative languages: French, German and Luxembourgish. All procedural documents must be written in French, but the hearing may be carried out in these three languages.
Translation can be provided to parties in court and will be paid for by the government. However, if a party wants to produce a witness who needs a translator, the party will have to pay for the witness as well as for the translator.
**9) Any other relevant rules?**
There are no other relevant rules.

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[1] See also case C-529/15
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## 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?**
Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. They can also bring a claim for administrative review before the competent authority. The interest must be personal and different from a general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.
ENGOs have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOs have legal standing if the State of Luxembourg authorises them but national ENGOs are favoured as it is easier for them to receive official approval. In theory, local ENGOs could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOs have been recognized as having national importance by the Ministry. Foreign ENGOs need to have Luxembourg "residence" in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOs. Access to national courts in light of CJEU case law and related national case law is relatively effective in Luxembourg as long as the ENGOs have standing.
**2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?**
The administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.
**3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?**
Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.
**4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?**
In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.
**5) Are there some grounds/arguments precluded from the judicial review phase?**
There are no grounds/arguments precluded from the judicial review phase.

**6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?**
There is no such notion as equality of arms in Luxembourg.
**7) How is the notion of "timely" implemented by the national legislation?**
There are no specific requirement in law that environmental procedure should be timely.
**8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?**
Injunctive relief is available outside of the scope of the EIA and IED Directives in cases where there is a risk of serious damage.
It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.
**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?**
In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.

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

**1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?**
Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. They can also bring a claim for administrative review before the competent authority. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.
ENGOs have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOs have legal standing if the State of Luxembourg authorises them but national ENGOs are favoured as it is easier for them to receive official approval. In theory, local ENGOs could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOs have been recognized as having national importance by the Ministry. Foreign ENGOs need to have Luxembourg "residence" in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOs. Access to national courts in light of CJEU case law and related national case law is relatively effective in Luxembourg.
**2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?**
The administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.
**3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?**
Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.
**4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?**
In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.
**5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?**
Injunctive relief is available in cases where there is a risk of serious damage.
It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.
**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?**
In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.

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

**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?**

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. They can also bring a claim for administrative review before the competent authority. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.

ENGOs have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOs have legal standing if the State of Luxembourg authorises them but national ENGOs are favoured as it is easier for them to receive official approval. In theory, local ENGOs could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOs have been recognized as having national importance by the Ministry. Foreign ENGOs need to have Luxembourg “residence” in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOs.

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

The administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

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

In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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

Injunctive relief is available in cases where there is a risk of serious damage.

It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge’s decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.

**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?**

In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers’ fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.

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

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

Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.

Administrative review can take two forms before the administrative tribunal : a claim to obtain the invalidation of the administrative decision or a claim to request the reformation of the de decision. Before taking an action before the administrative tribunal, an administrative review can be taken before the competent authority.

ENGOs have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOs have legal standing if the State of Luxembourg authorises them but national ENGOs are favoured as it is easier for them to receive official approval. In theory, local ENGOs could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOs have been recognized as having national importance by the Ministry. Foreign ENGOs need to have Luxembourg “residence” in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOs.

**2) Does the form in which the plan or programme is adopted makes a difference in terms of legal standing (see also Section 2.5 below)?**

The form in which the plan or programme is adopted makes no difference in terms of legal standing.

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

The administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.

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

Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.

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

In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.

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

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

**7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?**
There is no such notion as equality of arms in Luxembourg.
**8) How is the notion of "timely" implemented by the national legislation?**
There are no specific requirements in law that environmental procedure should be timely.
**9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?**
Injunctive relief is available in cases where there is a risk of serious damage.
It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.
**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?**
In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.

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

**1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?**
Only individuals who have a direct, certain, personal, actual, effective and legitimate interest in the matter can bring a case before judiciary or administrative courts. The interest must be personal and different from general interest. The individual must demonstrate that there is a link between the administrative decision and his own situation. The situation must also exist at the moment of the decision.
ENGOs have legal standing if they have received official approval by the State of Luxembourg based on their national importance. To receive official approval, the protection of the environment must have been included in their bylaws for three years. Foreign ENGOs have legal standing if the State of Luxembourg authorises them but national ENGOs are favoured as it is easier for them to receive official approval. In theory, local ENGOs could be recognized as having national importance if they fulfil the legal requirement. However, their number is quite small in Luxembourg and it seems that only very few ENGOs have been recognized as having national importance by the Ministry. Foreign ENGOs need to have Luxembourg "residence" in order to be recognized as having national importance. This system might be quite discriminating for foreign ENGOs.
**2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?**
The administrative tribunal judges the procedural and the substantive legality of the administrative decision as it judges on the merits of the case. The judge will verify factual and technical criteria and all appropriate documents. He can order an expert report and order the administration to submit files and documents. He can also visit the site to collect information related to the situation.
**3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?**
Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.
**4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?**
In order to have standing before national courts, it is not necessary to participate in the public consultation phase, to make comments, or to participate at hearing. The regular rules on standing before national courts apply to people who want to challenge a decision.
**5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?**
Injunctive relief is available in cases where there is a risk of serious damage.
It is possible to obtain injunctive relief to prevent imminent damage or to stop a statutory nuisance by the way of an interim emergency procedure. The emergency interim procedure is available in the case of an emergency before the judge of ordinary interim procedures ("juge des référés-ordinaires"). He can order any measures to protect evidence, order a witness to appear or make any decision to prevent imminent damage. The procedure is not written. Parties do not need to be represented by a lawyer. The judge's decision is only temporary and can be modified by the same judge later on or by the judge ruling on the merits. There are no special rules applicable to each sector.
**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?**
In Luxembourg, all Parties have to bear their own costs irrespective of the outcome of the case. Procedural indemnities are very rarely granted to parties. Other costs must usually be borne by the losing party. Bailiff costs and lawyers' fees are very high in Luxembourg. Expert, witness, translator and interpreter fees are also governed by a Grand-Ducal regulation. Lawyers will individually determine their own fees. Their fees may be calculated on an hourly basis or according to the complexity of the case. Lawyers will generally ask for retainers for their fees, costs and disbursement other than the statutory fees. There are no safeguards against the costs being prohibitive.
**7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[6]?**
It is possible to bring a legal challenge before the administrative tribunal of Luxembourg concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU. Prejudicial questions can be sent to the Tribunal.

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

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

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

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

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

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

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## Other relevant rules on appeals, remedies and access to justice in environmental matters

An appeal against a decision of an administrative tribunal must be brought within 40 days.

The loser will be ordered to pay the procedural fees.

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